

# **EXHIBIT C**

Stephen M. Factor, M.D.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ATLANTIC COUNTY

(GENERAL, GROSS, WICKER):

— — —

— — —

NOVEMBER 27, 2012

— — —

Videotaped deposition of

STEPHEN M. FACTOR, M.D., held at Jacobi Medical Center, 1400 Pelham Parkway South, Bronx, New York 10464, commencing at 2:08 p.m., on the above date, before Margaret Peoples, a Registered Professional Reporter.

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Stephen M. Factor, M.D.

|    | Page 2  | Page 4  |
|----|---|---|
| 1  | APPEARANCES :                                 |   |
| 2  | MAZIE, SLATER, KATZ & FREEMAN, LLC            | 1 DEPOSITION SUPPORT INDEX                              |
| 3  | BY: DAVID MAZIE, ESQUIRE                      | 2   |
| 4  | 103 Eisenhower Parkway, 2nd Floor             | 3   |
|    | Roseland, New Jersey 07068                    | Direction to Witness Not To Answer                      |
| 5  | (973) 228-9898                                | 4 Page Line Page Line                                   |
| 6  | Counsel for the Plaintiffs                    | 5 None  |
| 7  |   | 6   |
| 8  | BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC | 7   |
| 9  | BY: NILS B. (BURT) SNELL, ESQUIRE             | 8   |
| 10 | Suite 400                                     | 9 Request For Production of Documents                   |
| 11 | 500 Office Center Drive                       | 10 Page Line Page Line                                  |
| 12 | 8 Fort Washington, Pennsylvania 19034         | 11 None   |
| 13 | (267) 513-1885                                | 12  |
| 14 | Counsel for the Defendants                    | 13 Stipulations   |
| 15 |   | 14 Page Line Page Line                                  |
| 16 | ALSO PRESENT:                                 | 15 None   |
| 17 | Christopher Campbell, Videographer            | 16 Questions Marked                                     |
| 18 |   | 17 Page Line Page Line                                  |
| 19 | - - -   | 18 None   |
| 20 |   | 19  |
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|    | Page 3  | Page 5  |
| 1  | - - -   | 1 Reserved for Confidential Designation Index as        |
| 2  | INDEX   | 2 Pursuant to the Protective Order                      |
| 3  | WITNESS PAGE NO.                              | 3   |
| 4  | STEPHEN M. FACTOR, M.D.                       | 4 Defendants did not have any Confidential Designations |
| 5  | By Mr. Mazie 8                                | 5   |
| 6  |   | 6   |
| 7  | By Mr. Snell 129                              | 7   |
| 8  |   | 8   |
| 9  | - - -   | 9   |
| 10 | EXHIBITS                                      | 10  |
| 11 | NO. DESCRIPTION PAGE NO.                      | 11  |
| 12 | EXH.1 Pathology Slides 7                      | 12  |
| 13 |   | 13  |
| 14 | - - -   | 14  |
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| 1      Reserved for Confidential Designation Index as<br>2      Pursuant to the Protective Order<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25   | 1      Butler Snow on behalf of the<br>2      defendants, Ethicon and Johnson &<br>3      Johnson.<br>4      VIDEOGRAPHER: The court<br>5      reporter is Margaret Peoples and<br>6      will now swear in the witness.<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25  |
|   | - - -<br>STEPHEN M. FACTOR, M.D.,<br>after having been duly sworn, was<br>examined and testified as follows:<br>- - -<br>EXAMINATION<br>- - -<br>BY MR. MAZIE:   |
|   | Q. Dr. Factor, my name is David<br>Mazie and I represent the plaintiffs in<br>two cases in which you are being deposed,<br>hopefully at least one of them today.<br>Certainly, we will find out from the<br>Court whether we will be deposing you on<br>the second case.   |
|   | How many times have you been<br>deposed before?  |
|   | A. Many.<br>Q. How many is many?   |
| Page 7  | Page 9   |
| 1      - - -<br>2      (Whereupon, Exhibit 1 was<br>3      marked for identification.)<br>4      - - -<br>5      VIDEOGRAPHER: We are now on<br>6      the record. My name is<br>7      Christopher Campbell. I'm a<br>8      videographer for Golkow<br>9      Technologies. Today's date is<br>10     November 27, 2012 and the time is<br>11     2:08.<br>12     This deposition is being<br>13     held in Bronx, New York, In Re:<br>14     Pelvic Mesh, for the Superior<br>15     Court of New Jersey, Atlantic<br>16     County.<br>17     The deponent is Dr. Stephen<br>18     Factor.<br>19     At this time, will counsel<br>20     please announce their appearances<br>21     for the record?<br>22     MR. MAZIE: David Mazie,<br>23     Mazie, Slater, Katz & Freemen on<br>24     behalf of the plaintiffs.<br>25     MR. SNELL: Burt Snell, | 1      A. I don't keep a precise<br>2      count, but somewhere close to 125 to 150<br>3      over the last 30-plus years.<br>4      Q. Over the past 10 years, how<br>5      many times do you think you have been<br>6      deposed?<br>7      A. It's averaged about six to<br>8      eight a year.<br>9      Q. And what percentage of your<br>10     cases in which you have been deposed have<br>11     been on behalf of the defense versus the<br>12     plaintiff?<br>13     A. My breakdown has been about<br>14     85 percent for defense and 15 percent or<br>15     so for plaintiff.<br>16     Q. Have you ever worked in a<br>17     pharmaceutical-type case?<br>18     A. Yes.<br>19     Q. On how many occasions?<br>20     A. I have done products<br>21     liability now for 20 years, 15 to 20<br>22     years. I have testified in virtually<br>23     none of them, at least with the<br>24     pharmaceutical cases, but I have been<br>25     working over that period of time. |

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| <p>1       Q. How many times have you been<br/>2       retained in a medical device case over<br/>3       the past 20 years?</p> <p>4       A. I've had a long-standing<br/>5       involvement with St. Jude Medical for<br/>6       over 8 to 10 years, leading to testimony<br/>7       last year.</p> <p>8       Q. On how many occasions have<br/>9       you been retained where there was an<br/>10       issue of whether or not a medical device<br/>11       was defective?</p> <p>12       A. That was, I believe, the<br/>13       only medical device case. The other<br/>14       products liability have been drug or --<br/>15       and even with the products liability, it<br/>16       was primarily -- I was involved mainly<br/>17       with the experimental studies dealing<br/>18       with the device.</p> <p>19       Q. On how many occasions over<br/>20       the past 20 years have you acted as an<br/>21       expert in where there was an issue of<br/>22       whether a drug or medical device was at<br/>23       issue?</p> <p>24       A. I don't keep a precise<br/>25       count, so I don't know.</p>              | <p>1       subject.<br/>2       Q. And in every single case in<br/>3       which there's a medical device or drug at<br/>4       issue, and we're talking at least 100, if<br/>5       not more, you have acted as the expert on<br/>6       behalf of the defense, correct?</p> <p>7       MR. SNELL: Objection to the<br/>8       form.</p> <p>9       A. Correct, except for one case<br/>10       a number of years ago that I did for<br/>11       plaintiffs in an asbestos litigation.</p> <p>12       Q. That doesn't involve a<br/>13       medical device or a drug, correct?</p> <p>14       A. No. Correct.</p> <p>15       Q. Fair to say in the more than<br/>16       100 cases in which there's been an issue<br/>17       involving a medical device or drug, you<br/>18       have acted as an expert on behalf of<br/>19       defense in every single one of those<br/>20       cases?</p> <p>21       A. Correct.</p> <p>22       MR. SNELL: Objection to<br/>23       form.</p> <p>24       BY MR. MAZIE:<br/>25       Q. And you've never acted as an</p>  |
| <p style="text-align: center;">Page 11</p> <p>1       Q. Can you estimate for us?</p> <p>2       A. It's, I'd say, between five<br/>3       and ten cases a year over the past 10<br/>4       years.</p> <p>5       Q. And what percentage of those<br/>6       cases in which there was an issue<br/>7       involving the medical device or drug did<br/>8       you testify or were you an expert,<br/>9       rather, on behalf of the plaintiff versus<br/>10       the defense?</p> <p>11       A. They were all for defense.</p> <p>12       Q. Fair to say that -- strike<br/>13       that.</p> <p>14       Can you tell me how many you<br/>15       said per year?</p> <p>16       A. Five to ten.</p> <p>17       Q. So, is it fair to say you<br/>18       have acted as an expert in cases in which<br/>19       there was either a medical device or drug<br/>20       at issue on more than 100 cases?</p> <p>21       MR. SNELL: Objection, form.</p> <p>22       A. I think in total, more<br/>23       likely, yes, because a number of cases<br/>24       dealt with specific issues from<br/>25       individuals dealing with the same</p> | <p style="text-align: center;">Page 13</p> <p>1       expert on behalf of the plaintiff in a<br/>2       case in which there was a medical device<br/>3       or drug at issue, correct?</p> <p>4       A. Correct.</p> <p>5       MR. SNELL: Objection to<br/>6       form.</p> <p>7       BY MR. MAZIE:<br/>8       Q. I'm going to give you some<br/>9       just ground rules, even though you're<br/>10       obviously familiar with them. First of<br/>11       all, you understand you're under oath?</p> <p>12       A. Correct.</p> <p>13       Q. You understand that your<br/>14       testimony has the same force and effect<br/>15       as if you were sitting before a judge and<br/>16       jury at this time?</p> <p>17       A. Yes.</p> <p>18       Q. If I ask you a question and<br/>19       you answer it, I'm going to presume you<br/>20       understood the question. If you don't<br/>21       understand the question or any part of<br/>22       it, let me know and I'll rephrase it.<br/>23       But if you answer the question, I'm going<br/>24       to presume you understood it. Okay?</p> <p>25       A. Yes.</p> |

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| <p>1       Q. Obviously, don't speculate,<br/>2       don't guess. If you know something, you<br/>3       will tell us that. Okay?<br/>4       A. Yes.<br/>5       Q. Doctor, are you affiliated<br/>6       with any type of expert organization that<br/>7       advertises your services?<br/>8       A. None whatsoever.<br/>9       Q. Do you advertise your<br/>10      services?<br/>11      A. Absolutely not.<br/>12      Q. Have you worked with Butler<br/>13      Snow or any of its attorney in the past?<br/>14      A. I have worked with Mr. Snell<br/>15      once. I don't recall whether he was at<br/>16      Butler Snow at the time, but I have<br/>17      worked with him.<br/>18      Q. And what type of case did<br/>19      you work with Mr. Snell?<br/>20      A. It was a Phen-fen case.<br/>21      Q. And did you actually testify<br/>22      at a deposition in the Phen-fen case?<br/>23      A. Not that I recall.<br/>24      Q. And aside from that one<br/>25      occasion with Mr. Snell, have you ever</p>                           | <p>1       A. I don't know.<br/>2       Q. Fair to say that you have<br/>3       worked as an expert on behalf of Johnson<br/>4       &amp; Johnson between 10 and 20 times?<br/>5       A. By definition.<br/>6       Q. Is that correct?<br/>7       A. Yes.<br/>8       Q. Doctor, you have privileges<br/>9       at Jacobi Medical Center?<br/>10      A. Yes, I do.<br/>11      Q. Do you have privileges<br/>12      anywhere else?<br/>13      A. I don't know if I have<br/>14      active privileges at Montefiore. I don't<br/>15      think I do anymore.<br/>16      Q. You don't hold any positions<br/>17      at Montefiore?<br/>18      A. Correct.<br/>19      Q. What positions do you hold<br/>20      at Jacobi Medical Center?<br/>21      A. I'm chairman of the<br/>22      department of pathology.<br/>23      Q. Any other positions?<br/>24      A. I'm director of anatomic<br/>25      pathology as well as chairman.</p>  |
| <p style="text-align: center;">Page 15</p> <p>1       worked with him or anyone at his firm?<br/>2       A. Not to my recollection.<br/>3       Q. Never worked with Christie<br/>4       Jones?<br/>5       A. No.<br/>6       Q. Have you ever worked as an<br/>7       expert or been retained as an expert on<br/>8       behalf of Ethicon, Johnson &amp; Johnson or<br/>9       any of the affiliated entities with<br/>10      Johnson &amp; Johnson?<br/>11      A. Johnson &amp; Johnson, yes, not<br/>12      Ethicon.<br/>13      Q. On how many occasions have<br/>14      you acted as an expert for Johnson &amp;<br/>15      Johnson?<br/>16      A. I don't know the number, but<br/>17      it's -- they were all drug cases and I<br/>18      would be guessing. I don't know.<br/>19      Q. Have you worked as an expert<br/>20      on behalf of Johnson &amp; Johnson more than<br/>21      ten times?<br/>22      A. Yes.<br/>23      Q. Have you worked as an expert<br/>24      on behalf of Johnson &amp; Johnson more than<br/>25      25 times?</p> | <p style="text-align: center;">Page 17</p> <p>1       Q. Are those all of your<br/>2       positions at this hospital?<br/>3       A. At the hospital, yes.<br/>4       Q. Do you have any positions<br/>5       with any professional organizations?<br/>6       A. Well, I'm -- I have<br/>7       positions at the medical school. I,<br/>8       also, belong to a number of organizations<br/>9       where I have had positions and still have<br/>10      some degree of active positions.<br/>11      Q. What medical school are we<br/>12      speaking about?<br/>13      A. Albert Einstein College of<br/>14      Medicine.<br/>15      Q. What is your position there?<br/>16      A. I'm a tenure full professor<br/>17      of pathology of medicine.<br/>18      Q. Do you have a subspecialty<br/>19      in pathology?<br/>20      A. Yes, I do.<br/>21      Q. What is that?<br/>22      A. Cardiovascular pathology.<br/>23      Q. You are not a urogynecologic<br/>24      pathologist, correct?<br/>25      A. That is correct.</p> |

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|---|---|
| <p>1                   MR. SNELL: Object to form.</p> <p>2 BY MR. MAZIE:</p> <p>3                   Q. What is the difference</p> <p>4 between a urogynecologic pathologist and</p> <p>5 a cardiologic pathologist?</p> <p>6                   A. Well, it has to do not so</p> <p>7 much with day to day examination of</p> <p>8 tissues. It has to do with, in my case</p> <p>9 at least, with my research and the bulk</p> <p>10 of my writing has dealt with</p> <p>11 cardiovascular disease of all aspects</p> <p>12 and, also, my teaching deals with</p> <p>13 cardiovascular disease. I see</p> <p>14 urogynecologic specimens all the time as</p> <p>15 part of my surgical pathology experience,</p> <p>16 but I'm not a urogynecologic pathologist.</p> <p>17                   Q. What percentage of the time</p> <p>18 do you examine urogynecologic specimens?</p> <p>19                   A. There's no way to calculate</p> <p>20 that. I sign out surgical specimens on a</p> <p>21 daily basis. I sign out cytology,</p> <p>22 generally, on a daily basis. And even</p> <p>23 the cases that I don't actually -- that</p> <p>24 I'm not actually responsible for, I see</p> <p>25 along with my staff during a daily peer</p>             | <p>1                   A. I was trying to estimate. I</p> <p>2 would say yearly I see between eight and</p> <p>3 ten mesh cases from abdominal ventral</p> <p>4 hernias and inguinal hernias. I, also,</p> <p>5 see significantly more vascular grafts</p> <p>6 with -- usually with GORE-TEX as the</p> <p>7 material used. And, occasionally, I see</p> <p>8 particularly at autopsy, vascular grafts</p> <p>9 from large vessels.</p> <p>10                   Q. If you take GORE-TEX out of</p> <p>11 the mix, how often do you see any other</p> <p>12 type of surgical mesh?</p> <p>13                   A. Well, it's EIGHT to ten</p> <p>14 hernia cases. And that's -- and other</p> <p>15 than that, the Dacron used for vascular</p> <p>16 grafts.</p> <p>17                   Q. What the hernia mesh made of</p> <p>18 that you see?</p> <p>19                   A. Most often, it's, to my</p> <p>20 knowledge, it's polypropylene, but I</p> <p>21 don't know that all of them include that.</p> <p>22                   Q. Doctor, you're board</p> <p>23 certified?</p> <p>24                   A. Yes, I am.</p> <p>25                   Q. And in what discipline?</p> |
| <p style="text-align: center;">Page 19</p> <p>1 review conference.</p> <p>2                   Q. So you can't estimate for me</p> <p>3 and for this jury what percentage of the</p> <p>4 time that you actually examine</p> <p>5 urogynecologic specimens?</p> <p>6                   A. Absolutely not. There's --</p> <p>7 I mean, we receive specimens on a daily</p> <p>8 basis. The gynecologists tend to operate</p> <p>9 or oncologic gynecologic surgeons operate</p> <p>10 one day a week, but our other</p> <p>11 gynecologists operate daily and we</p> <p>12 receive specimens virtually every day.</p> <p>13                   Q. In your professional</p> <p>14 practice outside of this particular case,</p> <p>15 how many times have you reviewed or</p> <p>16 examined any type of transvaginal mesh</p> <p>17 from a pathologist standpoint?</p> <p>18                   A. None that I can recall.</p> <p>19                   Q. And aside from transvaginal</p> <p>20 mesh, how often do you actually -- strike</p> <p>21 that.</p> <p>22                   In your work as a</p> <p>23 pathologist, how often do you actually</p> <p>24 examine specimens involving any type of</p> <p>25 mesh or any type of mesh, surgical mesh?</p> | <p style="text-align: center;">Page 21</p> <p>1                   A. Anatomic and clinical</p> <p>2 pathology.</p> <p>3                   Q. You were board certified in</p> <p>4 1995?</p> <p>5                   A. Correct.</p> <p>6                   Q. Did you have to take both</p> <p>7 oral and written boards?</p> <p>8                   A. It was written and I believe</p> <p>9 a portion of the anatomic boards were</p> <p>10 oral at that time, yes.</p> <p>11                   Q. Did you pass your written</p> <p>12 and oral boards on the first try?</p> <p>13                   A. Yes.</p> <p>14                   Q. Have your privileges in any</p> <p>15 hospital ever been suspended or revoked?</p> <p>16                   A. No.</p> <p>17                   Q. Have you ever been -- strike</p> <p>18 that.</p> <p>19                   Has anyone ever filed a</p> <p>20 complaint against you with the Board of</p> <p>21 Medical Examiners or any other</p> <p>22 organizations?</p> <p>23                   A. No.</p> <p>24                   MR. SNELL: Form.</p> <p>25                   BY MR. MAZIE:</p>  |

6 (Pages 18 to 21)

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| <p>1       Q. Have you ever been sued for<br/>2 malpractice?</p> <p>3       A. I was named in a suit that I<br/>4 had nothing to do with, just as the<br/>5 chairman of the department and then I was<br/>6 subsequently dropped.</p> <p>7       Q. Just once?</p> <p>8       A. To my knowledge, yes.</p> <p>9       Q. Have you ever written any<br/>10 articles involving mesh?</p> <p>11      A. No.</p> <p>12      Q. Mesh of any sort?</p> <p>13      A. No.</p> <p>14      Q. Have you ever given any<br/>15 presentations concerning mesh, surgical<br/>16 mesh?</p> <p>17      A. No.</p> <p>18      Q. Have you ever studied<br/>19 surgical mesh?</p> <p>20       MR. SNELL: Objection to<br/>21 form.</p> <p>22      A. I don't recall because I<br/>23 have done studies with my surgical<br/>24 colleagues, my cardiac surgical<br/>25 colleagues and whether or not they used</p>   | <p>1       pathology slides that I have to do here<br/>2 in the office, but most of the remaining<br/>3 work is done at night and weekends.</p> <p>4       Q. How many cases do you<br/>5 currently have for J&amp;J?</p> <p>6       A. None that I recall. They're<br/>7 still active. There may be one or two<br/>8 out there, but I don't know.</p> <p>9       Q. Can you estimate for me over<br/>10 the past 10 years how much money J&amp;J has<br/>11 paid you for expert work?</p> <p>12      A. I have no idea.</p> <p>13      Q. What are you being paid on<br/>14 an hourly basis for this case?</p> <p>15      A. \$500 an hour.</p> <p>16      Q. Do you know how much you<br/>17 have been paid to date?</p> <p>18      A. Yes.</p> <p>19      Q. How much?</p> <p>20      A. 21,000.</p> <p>21      Q. Doctor, you have issued one<br/>22 report in this case?</p> <p>23      A. Correct.</p> <p>24      Q. Linda Gross?</p> <p>25      A. Correct.</p>                                     |
| <p style="text-align: center;">Page 23</p> <p>1       any mesh materials in those studies, I<br/>2 don't recall whether it did or not.</p> <p>3       Q. As you sit here today, you<br/>4 can't recall any presentations you have<br/>5 given on surgical mesh?</p> <p>6       A. To my knowledge, I haven't<br/>7 given any presentations.</p> <p>8       Q. To your knowledge, you have<br/>9 never done any research on surgical mesh,<br/>10 correct?</p> <p>11      A. Correct.</p> <p>12      Q. Doctor, what percentage of<br/>13 your income over the past 10 years has<br/>14 been as a result of medical-legal expert<br/>15 work?</p> <p>16      A. It's averaged between 25 and<br/>17 40 percent.</p> <p>18      Q. What percentage of your time<br/>19 over the past 10 years has been as a<br/>20 result of medical-legal expert work?</p> <p>21      A. It's difficult to total. In<br/>22 general, with all cases, between 10 to 20<br/>23 hours a week, but not every week. And<br/>24 usually that's during evenings and<br/>25 weekends, other than actually reviewing</p> | <p style="text-align: center;">Page 25</p> <p>1       Q. That would be dated October<br/>2 9, 2012?</p> <p>3       A. Yes.</p> <p>4       Q. And does this report contain<br/>5 all of your opinions in the case?</p> <p>6       A. To date, yes.</p> <p>7       Q. What do you mean to date?</p> <p>8       A. Well, if additional<br/>9 information becomes available, I might be<br/>10 asked to write a supplement, but I<br/>11 haven't done so as of yet.</p> <p>12      Q. As of right now, these are<br/>13 all the opinions you have in the case,<br/>14 correct?</p> <p>15      A. Right.</p> <p>16      Q. And let me ask you, is it<br/>17 fair to say that mesh when it's placed in<br/>18 the human body elicits a foreign body --<br/>19 I'm sorry. Is it fair to say that when<br/>20 mesh is placed into the human body<br/>21 provokes inflammation?</p> <p>22      A. Yes.</p> <p>23      Q. And explain to us how that<br/>24 works?</p> <p>25      A. The mesh is recognized as a</p> |

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| <p>1 foreign material and it elicits an<br/> 2 inflammatory response, which is --<br/> 3 includes changes comparable to wound<br/> 4 healing with the development of<br/> 5 granulation tissue, the laying down of<br/> 6 fibrosis, the development of<br/> 7 neovasculature. And along with that, it<br/> 8 elicits an inflammatory response. And<br/> 9 that includes the reaction of mononuclear<br/> 10 cells, monocytes that are altered into<br/> 11 macrophages and then ultimately, in some<br/> 12 cases, multinuclear giant, foreign body<br/> 13 type giant cells, along with lymphocytes<br/> 14 and rarely eosinophils or mass cells.</p> <p>15 Q. And as you sit here today,<br/> 16 do you know how much mesh was placed in<br/> 17 Linda Gross?</p> <p>18 A. How much volumetrically?</p> <p>19 Q. Yes.</p> <p>20 A. I don't know.</p> <p>21 Q. If you took each fiber and<br/> 22 stretched it out, do you know how much<br/> 23 distance that would be?</p> <p>24 A. I have no idea.</p> <p>25 Q. In your review of the</p>        | <p>1 natural tissue, as well as in response to<br/> 2 injury.</p> <p>3 Q. Doctor, you've reviewed a<br/> 4 number of slides with regard to Linda<br/> 5 Gross, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Can you tell me how many<br/> 8 slides?</p> <p>9 A. I have to total them up.<br/> 10 There were 19 slides, but then<br/> 11 subsequently I saw a second set, one<br/> 12 initially with the plaintiff's slides and<br/> 13 then I saw a set of defense slides. And<br/> 14 there were, also, some blanks in there.<br/> 15 So, my -- as best as I can tell from my<br/> 16 report, and I didn't quantify them, but<br/> 17 just going by the number of cases, the<br/> 18 number of accession cases and the number<br/> 19 of slides listed with those cases, I<br/> 20 believe there are 19.</p> <p>21 Q. 19 pieces of tissue were<br/> 22 examined by you?</p> <p>23 A. There may be even more<br/> 24 tissue on one slide, but 19 slides.</p> <p>25 Q. Can you estimate for me how</p>       |
| <p style="text-align: center;">Page 27</p> <p>1 pathology slides for Linda Gross, you saw<br/> 2 lymphocytes?</p> <p>3 A. Yes.</p> <p>4 Q. You saw macrophages?</p> <p>5 A. Yes.</p> <p>6 Q. Did you see giant cells?</p> <p>7 A. I saw some, yes.</p> <p>8 Q. Did you see fibroblasts?</p> <p>9 A. Yes.</p> <p>10 Q. Did you see scar tissue?</p> <p>11 A. There was fibrosis, yes.</p> <p>12 Q. And how is fibrosis formed?</p> <p>13 A. Fibrosis is the response of<br/> 14 the body again to healing with the<br/> 15 development of granulation tissue which<br/> 16 includes fibroblasts and endothelia cells<br/> 17 and buds of endothelia cells forming new<br/> 18 vessels. The fibroblasts secrete<br/> 19 procollagen, which polymerizes and then<br/> 20 initially develops a matrix of type three<br/> 21 collagen, which is also called reticulin,<br/> 22 and then over the course of days and<br/> 23 weeks and months, leads to the<br/> 24 development of type one collagen, which<br/> 25 is the typical collagen present in</p> | <p style="text-align: center;">Page 29</p> <p>1 many pieces of tissue you actually<br/> 2 examined?</p> <p>3 A. I can't tell you that.</p> <p>4 Q. Approximately.</p> <p>5 A. I have no idea. It's,<br/> 6 approximately, 19. But whether any one<br/> 7 slide had two separate pieces of tissue,<br/> 8 I can't tell.</p> <p>9 Q. From how many operations --<br/> 10 strike that.</p> <p>11 The, approximately, 19<br/> 12 slides that you examined, how many<br/> 13 different sources did they come from?<br/> 14 And what I'm asking about sources,<br/> 15 sources within Linda Gross' body.</p> <p>16 A. Well, this is separate<br/> 17 accessioned tissues that are from the<br/> 18 gynecologic track, as well as elsewhere,<br/> 19 but total is the total number of<br/> 20 accession cases.</p> <p>21 Q. And from how many operations<br/> 22 did those slides come from?</p> <p>23 A. By my count, eight.</p> <p>24 Q. Do you know how many<br/> 25 operations Linda Gross has had?</p> |

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| <p>1       A. I believe 18.</p> <p>2       Q. As you sit here today, can</p> <p>3       you tell us those areas of Linda Gross'</p> <p>4       body, those tissue samples came from that</p> <p>5       you examined in this case?</p> <p>6       A. I can go by what or how they</p> <p>7       are labeled or how they were identified.</p> <p>8       One was rectovaginal mass. One was left</p> <p>9       posterior vagina, right posterior vagina.</p> <p>10      Another was large bowel biopsy, upper</p> <p>11      posterior vagina and ischial spine. It</p> <p>12      wasn't identified as the left or right.</p> <p>13      And then a separate one from left ischial</p> <p>14      spine, a separate one from soft tissue</p> <p>15      left buttock. Another one from left</p> <p>16      buttock. Another from fallopian tubes</p> <p>17      and another from retropubic mass.</p> <p>18      Q. Doctor, is it fair to say in</p> <p>19      those areas where you did not examine any</p> <p>20      tissue samples you have no opinion as to</p> <p>21      whether and to what extent there was any</p> <p>22      type of inflammation or fibrosis?</p> <p>23      A. Correct.</p> <p>24      Q. Doctor, is it fair to say</p> <p>25      that wherever the mesh is --</p> | <p>1       cases, the accession cases I, also,</p> <p>2       reviewed other slides.</p> <p>3       Q. So your answer has to do</p> <p>4       with two questions ago. Let's make sure.</p> <p>5       Is that correct?</p> <p>6       A. I believe I said there were</p> <p>7       eight accession cases and I listed those</p> <p>8       eight. There are additional other slides</p> <p>9       from the defense set of slides that I,</p> <p>10      also, reviewed that were not included</p> <p>11      with the plaintiff's slides.</p> <p>12      Q. Do you have a list of what</p> <p>13      those --</p> <p>14      A. Yes. That includes the</p> <p>15      cervix and uterus, it includes the</p> <p>16      gallbladder, it includes hemorrhoids, and</p> <p>17      that's it.</p> <p>18      Q. Okay. And just so the</p> <p>19      record is clear, aside from what the</p> <p>20      slides you looked at, whether they be</p> <p>21      from the plaintiff or the defense, you</p> <p>22      have no opinion as to those other areas</p> <p>23      of Linda Gross' body and what was</p> <p>24      transpiring within those other parts of</p> <p>25      her body?</p> |
| Page 31   | Page 33  |
| <p>1       A. Can I add something?</p> <p>2       Q. Sure.</p> <p>3       A. Because in the defense</p> <p>4       slides, there were other tissues that</p> <p>5       were not included with the plaintiff's</p> <p>6       slides.</p> <p>7       Q. I'm talking about any slides</p> <p>8       you've reviewed.</p> <p>9       A. Okay.</p> <p>10      Q. Just so we're clear, you</p> <p>11      have no opinions on what is going on any</p> <p>12      part of Linda Gross' body aside from what</p> <p>13      you saw on those particular tissue -- s?</p> <p>14      A. No.</p> <p>15      Q. -- samples?</p> <p>16      MR. SNELL: Object to form.</p> <p>17      A. But the ones I've identified</p> <p>18      for you were from the plaintiff's slide I</p> <p>19      initially reviewed and then I</p> <p>20      subsequently reviewed similar tissues</p> <p>21      from the plaintiff, but I, also reviewed</p> <p>22      others that were not included with the</p> <p>23      plaintiff's slides.</p> <p>24      Q. In addition to the 19 or?</p> <p>25      A. In addition to the number of</p>  | <p>1       A. Correct.</p> <p>2       Q. So whether or not there's</p> <p>3       inflammation, fibrosis or anything else</p> <p>4       going on in her body, if you didn't</p> <p>5       examine a tissue slide relating to it,</p> <p>6       you have no opinion on it?</p> <p>7       A. Correct.</p> <p>8       Q. And the -- just so I'm</p> <p>9       clear, is it fair to say that any time</p> <p>10      there is mesh, the tissue next to the</p> <p>11      mesh has inflammation or becomes</p> <p>12      inflamed?</p> <p>13      MR. SNELL: Objection to</p> <p>14      form.</p> <p>15      A. Not universally, no. There</p> <p>16      are areas even in these slides that show</p> <p>17      mesh without inflammation or without any</p> <p>18      meaningful inflammation.</p> <p>19      Q. Are you going to be</p> <p>20      rendering an opinion in this case --</p> <p>21      strike that.</p> <p>22      Is it fair to say that the</p> <p>23      majority of the time where mesh is</p> <p>24      touching tissue it will cause</p> <p>25      inflammation in that tissue?</p>   |

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|---|---|
| <p>1                   MR. SNELL: Objection to<br/>2                   form.<br/>3                   A. It's variable. The<br/>4                   inflammation that's present in some areas<br/>5                   is obvious and in other areas, there's<br/>6                   virtually no inflammation. Or if there's<br/>7                   inflammation, it may be associated -- or<br/>8                   it is associated with other findings,<br/>9                   including the presence of hemosiderin.<br/>10                  Q. What is the significant of<br/>11                  the presence of hemosiderin?<br/>12                  A. It's a natural response or<br/>13                  natural result from surgery during the<br/>14                  course of surgery regardless of what the<br/>15                  surgical procedure is, there is<br/>16                  disruption of blood vessels bleeding into<br/>17                  the tissue and then the blood breaks<br/>18                  down, the hemoglobin is released from the<br/>19                  red cells and turns in to hemosiderin<br/>20                  which elicits an inflammatory response.<br/>21                  Q. How long does it take for<br/>22                  hemosiderin to form?<br/>23                  A. Within four to seven days,<br/>24                  you see hemosiderin in the tissue.<br/>25                  Q. So if hemosiderin is shown</p> | <p>1                   doesn't change at all from that moment<br/>2                   on.<br/>3                   Q. You said it takes four to<br/>4                   seven days for hemosiderin to form.<br/>5                   A. Once you get bleeding in the<br/>6                   tissue, from the surgical procedure, you<br/>7                   will develop breakdown of the red cells<br/>8                   and the development of hemosiderin. So,<br/>9                   obviously, the hemosiderin is not for the<br/>10                  surgical procedure that was done at the<br/>11                  time of the resection, it was done -- or<br/>12                  is associated with procedures that were<br/>13                  antecedent to the procedure.<br/>14                  Q. That was my point. I want<br/>15                  to make sure we were on the same page.<br/>16                  So, if a tissue sample shows<br/>17                  hemosiderin, that relates to a prior<br/>18                  procedure?<br/>19                  A. Correct.<br/>20                  Q. And so you are not giving<br/>21                  any opinion in this case as to how often<br/>22                  mesh causes inflammation in the tissue?<br/>23                  MR. SNELL: Objection to<br/>24                  form.<br/>25                  A. All I said was that the</p>               |
| <p style="text-align: center;">Page 35</p> <p>1                  on some of these pathology slides, as it<br/>2                  relates to the actual operation from<br/>3                  which the tissue was taken or a prior<br/>4                  operation?<br/>5                  A. There's no way to determine<br/>6                  that other than the immediacy of the<br/>7                  hemosiderin to the tissue that's being<br/>8                  resected at the time. Whether it was<br/>9                  there prior to that, it's unlikely, but<br/>10                 theoretically it's possible. Hemosiderin<br/>11                 persists in the tissue, essentially,<br/>12                 forever.<br/>13                  Q. Well, I'm trying to<br/>14                  understand. So if there's an operation<br/>15                  and they take a piece of tissue to send<br/>16                  to pathology, does hemosiderin continue<br/>17                  to form from that point forward?<br/>18                  A. Hemosiderin -- you mean once<br/>19                  the tissue is out of the body?<br/>20                  Q. Yes.<br/>21                  A. No.<br/>22                  Q. So, once the tissue is taken<br/>23                  out of the body, it's then sent to<br/>24                  pathology, correct?<br/>25                  A. Sent in fixative. It</p>   | <p style="text-align: center;">Page 37</p> <p>1                  inflammation associated with the mesh is<br/>2                  variable. There are areas with virtually<br/>3                  no inflammation and that are areas with<br/>4                  more obvious inflammation.<br/>5                  Q. My question is, you are not<br/>6                  giving an opinion in this case on a<br/>7                  global scale as to how often the Prolift<br/>8                  mesh will cause inflammation in the<br/>9                  adjoining tissues?<br/>10                 A. I don't understand the<br/>11                 question.<br/>12                 MR. SNELL: Object to form.<br/>13                 BY MR. MAZIE:<br/>14                 Q. Okay. Well, you're giving<br/>15                 opinions in this case in the tissue<br/>16                 samples you examined, correct?<br/>17                 A. Correct.<br/>18                 Q. Beyond those tissue samples,<br/>19                 there's an overall question I'm asking<br/>20                 you. And that is, whether you're giving<br/>21                 an opinion as to how often and to what<br/>22                 extent the Prolift mesh will cause<br/>23                 inflammation in the patient's tissues.<br/>24                 A. You are talking about --<br/>25                 MR. SNELL: Objection to</p> |

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| <p>1       form.</p> <p>2       Q. Global?</p> <p>3       A. -- global patient's tissues.</p> <p>4       The answer is, no.</p> <p>5       Q. You are not giving that</p> <p>6       opinion?</p> <p>7       A. No.</p> <p>8       Q. Doctor, were there is</p> <p>9       inflammation, will that inflammation</p> <p>10      inflame nerves?</p> <p>11      A. Say that again.</p> <p>12      Q. Where you do have a</p> <p>13      situation where the mesh causes</p> <p>14      inflammation, will the inflammation to</p> <p>15      the extent there's nerves there, inflame</p> <p>16      the nerves?</p> <p>17      MR. SNELL: Objection to</p> <p>18      form.</p> <p>19      A. Only if one identifies</p> <p>20      evidence of neural involvement by</p> <p>21      inflammation, which I did not.</p> <p>22      Q. I'm asking you</p> <p>23      theoretically.</p> <p>24      A. Theoretically, if you have</p> <p>25      nerves and tissue and you have</p>   | <p>1       have identified that were present after</p> <p>2       being removed from her. In none of those</p> <p>3       nerves was there evidence of significant</p> <p>4       inflammation of nerves.</p> <p>5       Q. You don't know what went on</p> <p>6       or what is going on in the rest of her</p> <p>7       nerves or the rest of her tissues because</p> <p>8       you didn't examine them, correct?</p> <p>9       MR. SNELL: Objection to</p> <p>10      form.</p> <p>11      A. Well, that's a theoretical</p> <p>12      and, essentially, absurd comment.</p> <p>13      There's no way to know that without a</p> <p>14      biopsy, without knowing in other sites</p> <p>15      what is happening to nerves. There's</p> <p>16      no -- absolutely no scientific or</p> <p>17      otherwise way to know that.</p> <p>18      Q. And I asked you</p> <p>19      hypothetically if you have a situation</p> <p>20      where there's inflammation, can that</p> <p>21      cause inflamed nerves. And you called it</p> <p>22      neuritis.</p> <p>23      MR. SNELL: Objection to</p> <p>24      form.</p> <p>25      A. I said, theoretically, one</p>  |
| <p style="text-align: center;">Page 39</p> <p>1       inflammation, you can theoretically</p> <p>2       develop a neuritis, an inflammatory</p> <p>3       process involving nerves for any surgical</p> <p>4       procedure, regardless of what the</p> <p>5       procedure is and regardless of whether</p> <p>6       you use foreign material.</p> <p>7       Q. But my question is, if you</p> <p>8       have a situation where the Prolift mesh</p> <p>9       is causing inflammation and there's</p> <p>10      nerves within that tissue, is it fair to</p> <p>11      say that can inflame the nerves?</p> <p>12      MR. SNELL: Objection to</p> <p>13      form.</p> <p>14      A. Theoretically, if one sees</p> <p>15      it. But, if it's not seen, I can't</p> <p>16      answer in the global because we're not</p> <p>17      talking about the global picture. I'm</p> <p>18      talking about Mrs. Gross. And in that</p> <p>19      case, there is no inflammation of nerves,</p> <p>20      so I comment further than that.</p> <p>21      Q. You don't know what -- you</p> <p>22      didn't examine every nerve in every part</p> <p>23      of Mrs. Gross' pelvic area, correct?</p> <p>24      A. I examined the nerves that</p> <p>25      were present in all of the tissues that I</p> | <p style="text-align: center;">Page 41</p> <p>1       could have inflammation causing a</p> <p>2       neuritis, but one has to demonstrate it</p> <p>3       to make the diagnosis of neuritis.</p> <p>4       Q. Doctor, how would you</p> <p>5       characterize the inflammation that you</p> <p>6       saw within the tissue slides?</p> <p>7       A. As I indicated earlier, it</p> <p>8       was variable. There were areas with</p> <p>9       virtually no inflammation or very mild</p> <p>10      inflammation. There were areas with</p> <p>11      inflammation, particularly in the</p> <p>12      pictures that I saw today, areas</p> <p>13      predominantly associated with the</p> <p>14      presence of hemosiderin in the tissue.</p> <p>15      And there were a few areas where the</p> <p>16      inflammation was more significant.</p> <p>17      If taking the entire samples</p> <p>18      of tissue with it and without mesh --</p> <p>19      and, also, by the way, there's fat</p> <p>20      necrosis which causes inflammation,</p> <p>21      taking all that together, I would say the</p> <p>22      overall picture is one of mild to minimal</p> <p>23      in some cases inflammation.</p> <p>24      Q. And in some instances, is</p> <p>25      the inflammation that you saw more</p> |

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| <p>1      severe?</p> <p>2      A. In a few areas, the</p> <p>3      inflammatory response is more active. I</p> <p>4      don't know that I could quantify it as</p> <p>5      severe. If one is to do this from a</p> <p>6      scientific perspective, one would</p> <p>7      actually want to know the entire picture</p> <p>8      of inflammation. This is not a</p> <p>9      picture -- the tissues do not show a</p> <p>10     picture of severe inflammation</p> <p>11     throughout. There are few areas where</p> <p>12     the inflammatory response is more active</p> <p>13     and a few other areas where the</p> <p>14     inflammatory response is more active, but</p> <p>15     explained by other things, such as, as I</p> <p>16     said, hemosiderin or fat necrosis.</p> <p>17     Q. Doctor, does the -- when</p> <p>18     there's inflammation, does inflammation</p> <p>19     remain or does it then change into</p> <p>20     fibrosis?</p> <p>21     A. Inflammation and fibrosis</p> <p>22     are two separate processes. They go</p> <p>23     together to a certain extent, but the</p> <p>24     fibrosis is a response, as I indicated</p> <p>25     before, to wound healing, granulation</p>                               | <p>1      Q. Doctor, do you have an</p> <p>2      opinion as to what the cause of the</p> <p>3      fibrosis is that you saw within Ms.</p> <p>4      Gross' body?</p> <p>5      A. It's the normal response</p> <p>6      to -- that falls under the broad category</p> <p>7      of wound healing with -- as I said</p> <p>8      before, granulation tissue, laying down</p> <p>9      of collagen. And together with that,</p> <p>10     there's a macrophage response that in</p> <p>11     some areas is associated with the mesh or</p> <p>12     in some areas is associated with other</p> <p>13     phenomenon going on in the tissues.</p> <p>14     Q. Doctor, are you rendering an</p> <p>15     opinion in this case as to how mesh works</p> <p>16     within the female body?</p> <p>17     A. No.</p> <p>18     Q. Do you have an understanding</p> <p>19     of how the mesh is intended to work</p> <p>20     within the female body?</p> <p>21     A. Only in very broad senses.</p> <p>22     I mean, I'm not a bioengineer or</p> <p>23     mechanical engineer. I understand the</p> <p>24     general concept of support of the</p> <p>25     tissues, but I'm not here as an expert in</p> |
| Page 43   | Page 45   |
| <p>1      tissue, laying down of collagen.</p> <p>2      Inflammation is, initially, associated</p> <p>3      with the macrophage and giant cell</p> <p>4      inflammation associated with foreign</p> <p>5      material, foreign bodies and that</p> <p>6      includes hemosiderin and fat necrosis,</p> <p>7      generally persists for long periods of</p> <p>8      time, sometimes as long as one can track</p> <p>9      the process, but it is not --</p> <p>10     inflammation and fibrosis go together but</p> <p>11     not directly.</p> <p>12     Q. Is it fair -- strike that.</p> <p>13     Are you saying that</p> <p>14     inflammation does not cause fibrosis?</p> <p>15     A. Well, depends what the</p> <p>16     inflammation is. If you have an abscess</p> <p>17     in the tissue due to infection, obviously</p> <p>18     you're going to get fibrosis as a result.</p> <p>19     But inflammation, per se, if it damages</p> <p>20     structures, if it damages the heart</p> <p>21     muscle, you will get fibrosis as a</p> <p>22     response to that. But when you're</p> <p>23     dealing with tissues, as we are in this</p> <p>24     case, the inflammation, per se, is not</p> <p>25     the cause of the fibrosis.</p> | <p>1      that area.</p> <p>2      Q. Doctor, do you have an</p> <p>3      understanding that the mesh is intended</p> <p>4      to have scar tissue form within it?</p> <p>5      A. Yes.</p> <p>6      Q. And did you see fibrosis or</p> <p>7      scar tissue form within the pieces of</p> <p>8      mesh that you saw on the slides?</p> <p>9      MR. SNELL: Objection to</p> <p>10     form. Can you read that question</p> <p>11     back, actually?</p> <p>12     - - -</p> <p>13     (Whereupon, the requested</p> <p>14     portion was read.)</p> <p>15     - - -</p> <p>16     MR. SNELL: My objection</p> <p>17     holds.</p> <p>18     THE WITNESS: There is</p> <p>19     fibrosis in the tissue associated</p> <p>20     with the mesh.</p> <p>21     BY MR. MAZIE:</p> <p>22     Q. I'm not sure if I understand</p> <p>23     your answer. There's fibrosis in the</p> <p>24     tissue associated with the mesh. What</p> <p>25     does that mean?</p>   |

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| <p>1           A. Well, it's -- one of the<br/> 2        problems in dealing with tissues from the<br/> 3        vaginal wall is that the vagina is<br/> 4        fibrous tissue surfaced by mucosa. And<br/> 5        so, attempting to quantify the degree of<br/> 6        fibrosis in the tissue is very difficult.<br/> 7        One can see fibrous tissue surrounding<br/> 8        mesh fibers. One can see fibrous tissue<br/> 9        in areas of other damage, including fat<br/> 10       necrosis and hemosiderin deposition, but<br/> 11       to attempt to quantify it when you have a<br/> 12       background of fibrosis is very difficult.<br/> 13       There's no one way to pick out the<br/> 14       fibrous tissue that formed as discrete<br/> 15       scar related to the mesh from the tissue<br/> 16       that's normally present in the vaginal<br/> 17       stroma. There is fibrous tissue around<br/> 18       mesh fibers and, presumably, that's<br/> 19       fibrous tissue that formed as a response<br/> 20       to the mesh.</p> <p>21       Q. Fair to say -- first of all,<br/> 22       let me back up. Are you rendering any<br/> 23       opinions in this case as to what the<br/> 24       cause was of the fibrous tissue or the<br/> 25       fibrosis that you visualized on any of</p> | <p>1       form.<br/> 2       A. You are asking, am I going<br/> 3       to or not going to?<br/> 4       Q. Are you going to -- do you<br/> 5       have -- let me ask it this way. Do you<br/> 6       have any opinions in this case as to what<br/> 7       the specific cause was of any of the<br/> 8       fibrosis that you saw in any of the<br/> 9       slides?</p> <p>10       A. Yes.<br/> 11       MR. SNELL: Objection to<br/> 12       form.</p> <p>13       THE WITNESS: I said before,<br/> 14       it formed in response to the mesh,<br/> 15       it formed in response to other<br/> 16       injuries in the tissue.</p> <p>17       BY MR. MAZIE:</p> <p>18       Q. I understand that those are<br/> 19       the things that can cause the fibrosis.<br/> 20       My question to you is, are you going to<br/> 21       be able to look at fibrosis and say this<br/> 22       actual fibrosis here is as a result of<br/> 23       mesh, or this fibrosis is not the result<br/> 24       of mesh, it's a result of something else?</p> <p>25       MR. SNELL: Objection TO</p>             |
| <p>1       these slides?</p> <p>2       A. It's a response to the<br/> 3       surgery. It's a response to the presence<br/> 4       of mesh. It's a response to the other<br/> 5       phenomenon that were present in the<br/> 6       tissue, including bleeding and fat<br/> 7       necrosis.</p> <p>8       Q. Are you rendering an opinion<br/> 9       in this case as to whether and to what<br/> 10       extent any of the fibrosis that you saw<br/> 11       on the slides was the result of mesh<br/> 12       versus something else?</p> <p>13       A. As I just indicated, there<br/> 14       is evidence of fibrous tissue associated<br/> 15       with the mesh fibers. To quantify that<br/> 16       or to separate that from the surrounding<br/> 17       fibrous tissue, in my opinion, is very<br/> 18       difficult, if not impossible.</p> <p>19       Q. So you are not going to tell<br/> 20       this jury at trial when showing a piece<br/> 21       of -- or a slide that shows fibrosis<br/> 22       whether that fibrosis comes from the mesh<br/> 23       or whether it's comes from something<br/> 24       else?</p> <p>25       MR. SNELL: Objection to</p>   | <p>1       form. Are you taking about like<br/> 2       every strand of fibrosis, every<br/> 3       strand of fiber?</p> <p>4       MR. MAZIE: Yes, any of<br/> 5       them. Any of them.</p> <p>6       MR. SNELL: Object to form,<br/> 7       I mean --</p> <p>8       THE WITNESS: All that I can<br/> 9       do and I think any examiner can do<br/> 10       is to assess the presence of<br/> 11       fibrous tissue in its immediate<br/> 12       environment. Mesh fibers are<br/> 13       present. There is fibrous tissue<br/> 14       around -- between mesh fibers and<br/> 15       presumably that the mesh fiber<br/> 16       elicited the collagen deposition<br/> 17       of fibrosis. There are other<br/> 18       areas, as I said before, with fat<br/> 19       necrosis and with hemosiderin<br/> 20       that, also, are within an area of<br/> 21       fibrosis and presumably that<br/> 22       fibrosis was associated with those<br/> 23       changes. But to try and quantify<br/> 24       the extent of the fibrosis that's<br/> 25       present related to any one of</p> |
|   | 13 (Pages 46 to 49)  |

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|---|--|
| <p>1        those processes, I believe, is not<br/>2        possible.<br/>3        BY MR. MAZIE:<br/>4        Q. Doctor, are you going to be<br/>5        rendering any opinions in this case on<br/>6        mesh contraction?<br/>7        A. No.<br/>8        Q. Doctor, are you going to be<br/>9        rendering any opinions on the size of the<br/>10       mesh pores?<br/>11       A. No.<br/>12       Q. Doctor, are you going to be<br/>13       rendering any opinions in this case on<br/>14       whether a scar net formed or scar bridge?<br/>15       A. Well, I didn't see anything<br/>16       that was -- that could be, at least in my<br/>17       understanding of scar bridges, that could<br/>18       be interpreted as a scar bridge. There<br/>19       was -- as I said, there was fibrous<br/>20       tissue in the tissues, there were mesh<br/>21       fibers and there were the other changes<br/>22       that I indicated. There was nothing that<br/>23       I could identify as a bridge.<br/>24       Q. Are you rendering an opinion<br/>25       in this case that there was no scar</p> | <p>1        say it more simply.<br/>2        Do you have an understanding<br/>3        of how the mesh changes, if at all, once<br/>4        it's surgically placed into the body?<br/>5        A. Are you asking about<br/>6        degradation of the mesh?<br/>7        Q. I'm asking you about about<br/>8        degradation. I'm asking you whether it<br/>9        contracts. I'm asking you whether it<br/>10       becomes brittle or hard. I'm asking any<br/>11       of those things?<br/>12       MR. SNELL: Let me object to<br/>13       the form. Are you talking Prolift<br/>14       mesh?<br/>15       BY MR. MAZIE:<br/>16       Q. Prolift mesh, of course.<br/>17       A. I see no evidence of<br/>18       degeneration. I see no evidence, in my<br/>19       experience of polypropylene, ever<br/>20       undergoing degeneration of tissues. It<br/>21       persists for years in a state comparable<br/>22       to the way when it is placed in the body.<br/>23       I see that in vascular specimens for<br/>24       years. And I see nothing in these<br/>25       tissues, other than the disruptions</p>                          |
| <p style="text-align: center;">Page 51</p> <p>1        bridge or scar net formed anywhere within<br/>2        Linda Gross' body?<br/>3        A. Well, I didn't see<br/>4        everywhere within Linda Gross' body. All<br/>5        I saw was the tissues that I indicated<br/>6        before. In those tissues, I see nothing<br/>7        that indicates the presence of a bridge.<br/>8        And if I'm asked that question, that's my<br/>9        answer.<br/>10       Q. Doctor, do you have an<br/>11        opinions in this case on how the mesh<br/>12        itself will change within the body?<br/>13        MR. SNELL: Objection to<br/>14        form.<br/>15        A. I don't understand your<br/>16        question.<br/>17        Q. Do you have an understanding<br/>18        of what happens to mesh once it's<br/>19        surgically placed within the female body?<br/>20        MR. SNELL: Same objection,<br/>21        form.<br/>22        A. I don't understand that<br/>23        question, either.<br/>24        Q. Do you have an<br/>25        understanding -- I don't know how else to</p>  | <p style="text-align: center;">Page 53</p> <p>1        associated with the sectioning, the<br/>2        histological processing of the tissue<br/>3        that indicates there's any change in the<br/>4        mesh fiber.<br/>5        Q. Aside from that one opinion<br/>6        that you do not see any degeneration of<br/>7        the Prolift mesh, do you have any other<br/>8        opinions on what happens to the mesh once<br/>9        it's placed in the female body? I'm<br/>10       talking only about Prolift mesh.<br/>11       A. No.<br/>12       MR. SNELL: Objection to<br/>13        form.<br/>14        BY MR. MAZIE:<br/>15        Q. If there's inflammation,<br/>16        does it go through a process -- let me<br/>17        ask it a different way. It's kind of a<br/>18        lead up.<br/>19        You talked about active<br/>20        inflammation earlier, correct? You saw<br/>21        no evidence of active inflammation or did<br/>22        I misunderstand you?<br/>23        A. No. I think that's a<br/>24        misunderstanding because I have no way of<br/>25        know whether those inflammatory cells</p> |

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| <p>1 are, in fact, active or quiescent.</p> <p>2 MR. MAZIE: By the way,</p> <p>3 Burt, to the extent that since</p> <p>4 this is a deposition that either</p> <p>5 will be completed today as to Mrs.</p> <p>6 Wicker or on another occasion, any</p> <p>7 of the questions I'm asking him</p> <p>8 about his background, about the</p> <p>9 overall response of the mesh,</p> <p>10 things that are generic to both</p> <p>11 cases, I'm assuming you will agree</p> <p>12 that I can use those questions in</p> <p>13 both cases, so I don't have to ask</p> <p>14 him the same questions again at</p> <p>15 the second deposition, if there is</p> <p>16 a second deposition?</p> <p>17 MR. SNELL: I don't know if</p> <p>18 I can agree to that because they</p> <p>19 are different cases with different</p> <p>20 pathologic aspects from my limited</p> <p>21 attorney's understanding. So,</p> <p>22 what his background was and legal</p> <p>23 work and payments and things like</p> <p>24 that, general questions about in</p> <p>25 general how the inflammatory</p> | <p>1 understand -- if you put in the</p> <p>2 context of Wicker, then there may</p> <p>3 be differences, there may be</p> <p>4 things he saw that have bearing</p> <p>5 upon inflammation, there might be</p> <p>6 other causes of inflammation.</p> <p>7 That's why I'm not sure if I can</p> <p>8 agree to that. I'm not trying to</p> <p>9 be difficult. I'm not a</p> <p>10 pathologist, so there may be</p> <p>11 differences. I don't know.</p> <p>12 MR. MAZIE: I'm going to</p> <p>13 take the position that anything</p> <p>14 that I'm asking him today that is</p> <p>15 generic as to the mesh or,</p> <p>16 obviously, relating to his</p> <p>17 background or anything like that</p> <p>18 or as to science regarding</p> <p>19 macrophages and inflammation and</p> <p>20 how fibrosis formed can be used on</p> <p>21 any case that he's been identified</p> <p>22 as an expert on in the</p> <p>23 consolidated cases.</p> <p>24 All right. Why don't we go</p> <p>25 off the record.</p> |
| <p style="text-align: center;">Page 55</p> <p>1 process happens or how collagen</p> <p>2 lays down, those are general</p> <p>3 things, but --</p> <p>4 MR. MAZIE: I'm not --</p> <p>5 MR. SNELL: I'm confused by</p> <p>6 your question.</p> <p>7 MR. MAZIE: The question</p> <p>8 really relates to his background,</p> <p>9 it relates to whether he has any</p> <p>10 opinions on the pore size or</p> <p>11 whether there's degradation or how</p> <p>12 it effects the female body</p> <p>13 generically, Prolift mesh, all</p> <p>14 those questions would be the same</p> <p>15 for both cases. They're not</p> <p>16 specific to one versus the other.</p> <p>17 So all I'm saying is, I'm going to</p> <p>18 ask him now, so I don't have to</p> <p>19 ask him the exact same questions</p> <p>20 and get the exact same questions</p> <p>21 either later today or another day.</p> <p>22 It would be silly.</p> <p>23 MR. SNELL: If they're</p> <p>24 general questions, they're general</p> <p>25 questions. I just don't</p>   | <p style="text-align: center;">Page 57</p> <p>1 VIDEOGRAPHER: The time is</p> <p>2 now 2:57. We are going off the</p> <p>3 record.</p> <p>4 - - -</p> <p>5 (Whereupon, a brief recess</p> <p>6 was taken.)</p> <p>7 - - -</p> <p>8 VIDEOGRAPHER: The time is</p> <p>9 now 3:05. We are back on the</p> <p>10 record.</p> <p>11 BY MR. MAZIE:</p> <p>12 Q. Let's go to your report now,</p> <p>13 Doctor. In the first paragraph, you</p> <p>14 state fibrosis --</p> <p>15 A. What page?</p> <p>16 Q. Conclusions. You say that</p> <p>17 fibrosis, whether it's secondary to</p> <p>18 traumatic or -- how do you pronounce that?</p> <p>19 A. Iatrogenic.</p> <p>20 Q. Iatrogenic injury or</p> <p>21 response to tissue necrosis or damage</p> <p>22 elicits a chronic inflammatory response</p> <p>23 in association with the maturation of the</p> <p>24 collagen fibers.</p> <p>25 Is what you are saying there</p>  |

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| <p>1 fibrosis itself elicits a chronic<br/>2 inflammatory response?</p> <p>3 A. There are inflammatory cells<br/>4 that are associated with the development<br/>5 of granulation tissue that will persist<br/>6 in the tissue once the collagen and the<br/>7 new vessels have formed.</p> <p>8 Q. So, sometimes inflammation<br/>9 causes fibrosis, correct?</p> <p>10 A. Well, it's not causing the<br/>11 fibrosis. There's an injury to the<br/>12 tissue of one sort or another that leads<br/>13 to fibrosis. The inflammatory response<br/>14 is part of that.</p> <p>15 Q. Okay. And if there is<br/>16 inflammation as a result of the fibrosis,<br/>17 will you be able to see that in the<br/>18 slides?</p> <p>19 A. Well, you can see --<br/>20 certainly see the inflammatory cells and<br/>21 the presence of the collagen. They are a<br/>22 normal component of healing regardless of<br/>23 what, as I said here, regardless of what<br/>24 the injury is.</p> <p>25 Q. You say lower down, foreign</p>  | <p>1 place. You see it in selected areas.<br/>2 Q. But that inflammation itself<br/>3 will be chronic?</p> <p>4 MR. SNELL: Objection to<br/>5 form.</p> <p>6 A. Chronic inflammation has two<br/>7 definitions. One is in -- relative to<br/>8 the type of inflammatory cell that's<br/>9 present, just like acute inflammation<br/>10 tends to mean neutrophils and occasional<br/>11 eosinophils. Chronic inflammation is<br/>12 composed of lymphocytes, monocytes,<br/>13 macrophages and occasionally mass cells.<br/>14 That's a particular terminology that's<br/>15 used in a pathologic sense. It's not a<br/>16 temporal sense. It has some temporal<br/>17 component because the more chronic<br/>18 inflammatory response tends to follow the<br/>19 more acute inflammatory response. So<br/>20 there is a time dependency. But when you<br/>21 are talking about chronicity,<br/>22 long-standing process, that's a different<br/>23 kind of chronic.</p> <p>24 Q. Okay. Let's talk about the<br/>25 temporal relationship to the chronic</p>            |
| <p style="text-align: center;">Page 59</p> <p>1 bodies are present, the inflammatory<br/>2 response is chronic and persistent. What<br/>3 does that mean?</p> <p>4 A. That the macrophage and<br/>5 giant cell response -- the macrophage and<br/>6 giant cell response will persist in the<br/>7 tissue in some cases forever. It will --<br/>8 even in situations where you look at<br/>9 surgical suture granulomas ten years<br/>10 later, it will still be inflammatory<br/>11 cells, macrophages in a few lymphocytes.</p> <p>12 Q. Is it fair to say as a<br/>13 general proposition where mesh -- and I'm<br/>14 talking about Prolift mesh -- is placed<br/>15 within the female body where there's an<br/>16 inflammatory response is going to be<br/>17 chronic in many instances?</p> <p>18 A. Almost exclusively, yes.</p> <p>19 Q. So, any time there's a<br/>20 Prolift mesh, there will be a chronic<br/>21 inflammatory response within the female<br/>22 body?</p> <p>23 A. Of one degree or another.</p> <p>24 It's not universal. In other words, you<br/>25 don't see inflammation all over the</p> | <p style="text-align: center;">Page 61</p> <p>1 inflammatory response from the mesh.<br/>2 Okay?</p> <p>3 Where there is a chronic<br/>4 inflammatory response from the mesh in<br/>5 the female body that mesh will stay<br/>6 inflamed for how long?</p> <p>7 MR. SNELL: Objection to<br/>8 form.</p> <p>9 A. Well, the concept of<br/>10 inflamed, generally, indicates an act of<br/>11 process of inflammation. And that's not<br/>12 what is present, at least as best as we<br/>13 can tell. There is inflammatory cells as<br/>14 a result of the foreign material, but<br/>15 they aren't necessarily doing anything in<br/>16 an inflammatory process. In other words,<br/>17 they're not, to the best of my knowledge,<br/>18 releasing enzymes or other substances in<br/>19 the tissue that have an adverse effect on<br/>20 the tissue, they're just there.</p> <p>21 Q. Where there is that type of<br/>22 chronic inflammatory response, how long<br/>23 will it last?</p> <p>24 A. Potentially, forever.</p> <p>25 Q. So, when there is a chronic</p> |

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| <p>1 inflammatory response from the mesh<br/> 2 itself, it's permanent in nature?<br/> 3 MR. SNELL: Objection to<br/> 4 form.<br/> 5 BY MR. MAZIE:<br/> 6 Q. That response.<br/> 7 A. If there's inflammation, it<br/> 8 can persist, essentially, forever.<br/> 9 Q. You would expect that, where<br/> 10 there is inflammation, that the<br/> 11 inflammation will persist within the body<br/> 12 until the person dies?<br/> 13 A. Correct.<br/> 14 Q. And you say that for<br/> 15 some unknown -- I'm sorry. You say for<br/> 16 unknown reasons, some patients may have a<br/> 17 much more intense response than others<br/> 18 even when using similar materials and<br/> 19 surgical techniques. What did you mean<br/> 20 by that?<br/> 21 A. That there's patient<br/> 22 variability, unpredictable patient<br/> 23 variability regardless of what the<br/> 24 materials are, that some patients react<br/> 25 more actively, more exuberantly to</p>   | <p>1 inflammatory response to the mesh as<br/> 2 opposed to others?<br/> 3 A. Well, I don't -- as I said,<br/> 4 I don't know that's true with mesh. I<br/> 5 haven't -- most of the cases of mesh that<br/> 6 I have seen in regard to hernias were<br/> 7 removed for other reasons, either<br/> 8 adhesion to other sites to other organs<br/> 9 and in many cases due to infection. So<br/> 10 it's difficult to generalize to meshes as<br/> 11 a class of materials.<br/> 12 Q. All right. Then, we'll back<br/> 13 it up one. And it's fair to say that<br/> 14 it's your opinion that when foreign<br/> 15 bodies, such as mesh, are placed into<br/> 16 the body, some people have more of an<br/> 17 intense response, inflammatory response<br/> 18 to the foreign body as opposed to others?<br/> 19 MR. SNELL: Objection to<br/> 20 form.<br/> 21 A. As I said, I don't know I<br/> 22 can generalize to mesh because I don't<br/> 23 have the experience, other than that<br/> 24 which I have indicated. The statement<br/> 25 had to do with foreign material across</p> |
| <p style="text-align: center;">Page 63</p> <p>1 foreign material than others. And you<br/> 2 can see this in a number of different<br/> 3 situations. It's -- there's no way to<br/> 4 understand it, to predict it, to even<br/> 5 truly understand the mechanism, whether<br/> 6 it's an allergic phenomenon or some other<br/> 7 phenomena, it's not known.<br/> 8 Q. So it's fair to say that the<br/> 9 mesh will react differently within<br/> 10 different women?<br/> 11 MR. SNELL: Objection to<br/> 12 form.<br/> 13 A. Well, I don't know that.<br/> 14 I'm just -- this was a general statement<br/> 15 of observations with foreign materials in<br/> 16 many different situations where, in some<br/> 17 cases, they're of a much more pronounced<br/> 18 inflammatory response with similar<br/> 19 materials versus other patients. I can't<br/> 20 speak to the vast population of patients<br/> 21 with mesh other than the mesh that I have<br/> 22 seen in hernia procedures.<br/> 23 Q. You're experience as a<br/> 24 pathologist in examining mesh is that<br/> 25 some patients have a much more intense</p> | <p style="text-align: center;">Page 65</p> <p>1 the spectrum of foreign materials used in<br/> 2 surgical procedures.<br/> 3 Q. So you can't give us an<br/> 4 opinion one way or the other as to<br/> 5 whether or not mesh, in particular<br/> 6 Prolift mesh, affects different people<br/> 7 differently?<br/> 8 A. Correct.<br/> 9 Q. And you can't give an<br/> 10 opinion with regard to Prolift mesh as to<br/> 11 what type of inflammatory response is<br/> 12 expected within the average person?<br/> 13 MR. SNELL: Objection to<br/> 14 form.<br/> 15 BY MR. MAZIE:<br/> 16 Q. Or the average female.<br/> 17 MR. SNELL: Same objection.<br/> 18 A. Well, my understanding is<br/> 19 that the type of inflammation is what I<br/> 20 have described. That it's mononuclear<br/> 21 and macrophage inflammation with<br/> 22 fibroblast as a general response to the<br/> 23 presence of the mesh material.<br/> 24 Q. But can you quantify what is<br/> 25 the expected inflammation; in other</p>   |

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| <p>1 words, how bad or how severe that<br/>2 inflammation is in the typical female<br/>3 anatomy?</p> <p>4 MR. SNELL: Objection to<br/>5 form.</p> <p>6 THE WITNESS: I would have to<br/>7 look at large numbers of specimens<br/>8 to be able to answer that and I<br/>9 can't answer that.</p> <p>10 BY MR. MAZIE:</p> <p>11 Q. So you don't have such an<br/>12 opinion?</p> <p>13 A. Correct.</p> <p>14 Q. Do you have any opinions as<br/>15 to whether someone who has a pre-existing<br/>16 chronic pain syndrome is affected<br/>17 differently by the mesh?</p> <p>18 A. I do not, no.</p> <p>19 Q. You say that surgery, per<br/>20 se, regardless of whether foreign<br/>21 material is used, including sutures, will<br/>22 lead to tissue damage with necrosis of<br/>23 connective tissue and fat; is that<br/>24 correct?</p> <p>25 A. Correct.</p>  | <p>1 process. Obviously, if one makes an<br/>2 incision in the skin, a scar will form.<br/>3 That's easily identifiable because<br/>4 there's an absence -- there are changes<br/>5 in the epidermis and there's an absence<br/>6 of skin appendages in the underlying<br/>7 tissue and we see that grossly, as well<br/>8 as microscopically. In dealing with<br/>9 tissues, such as mesh implanted in<br/>10 vaginal tissue, there is fibrosis,<br/>11 there's no question, but -- and one<br/>12 could, based on the general concept that<br/>13 when you have surgical disruption of the<br/>14 tissue, you will develop fibrosis which<br/>15 is equivalent to scar. I would agree<br/>16 that there is some -- there's scar<br/>17 tissue, but it's not as easily definable<br/>18 as it is in certain tissues because of<br/>19 the nature of the underlying tissue<br/>20 itself.</p> <p>21 MR. MAZIE: I object and<br/>22 move to strike as nonresponsive.</p> <p>23 BY MR. MAZIE:</p> <p>24 Q. Doctor, all I've asked you<br/>25 was, does the mesh cause scar tissue.</p> |
| Page 67   | Page 69  |
| <p>1 Q. Then you say, there's always<br/>2 some degree of associated damage to blood<br/>3 vessels and tissue nerve bundles leading<br/>4 to entrapment. These responses are not<br/>5 unique to mesh. What do you mean by<br/>6 that?</p> <p>7 A. I think precisely what I<br/>8 said, that the surgical procedure,<br/>9 itself, if the tissue has nerve bundles<br/>10 and, obviously, has -- unless we're<br/>11 dealing with tendon or similar tissue,<br/>12 has blood vessels and often adipose<br/>13 tissue, there's going to be damage to<br/>14 those tissues that will be affected by<br/>15 the healing process.</p> <p>16 Q. We touched on this earlier.<br/>17 Doctor, do you agree that the mesh itself<br/>18 can cause scar tissue?</p> <p>19 MR. SNELL: Objection to<br/>20 form.</p> <p>21 A. The mesh cause fibrosis. It<br/>22 depends on how one defines scar tissue.</p> <p>23 Q. How do you define scar<br/>24 tissue?</p> <p>25 A. It's not an easily defined</p> | <p>1 A. I think I've answered it.<br/>2 Q. Well, I don't understand<br/>3 your answer, Doctor.<br/>4 A. Well, that's different.<br/>5 MR. SNELL: That's not a<br/>6 basis for an objection.</p> <p>7 BY MR. MAZIE:</p> <p>8 Q. I don't think your answer<br/>9 was responsive.</p> <p>10 MR. SNELL: I think it was.<br/>11 Q. Let me ask you simply, does<br/>12 the mesh cause fibrosis?</p> <p>13 MR. SNELL: Objection to<br/>14 form.</p> <p>15 A. Yes.</p> <p>16 Q. Is fibrosis different than<br/>17 scar tissue?</p> <p>18 A. Under certain circumstances,<br/>19 yes.</p> <p>20 Q. Okay. Within Linda Gross,<br/>21 is the fibrosis different than scar<br/>22 tissue?</p> <p>23 MR. SNELL: Objection to form.<br/>24 A. It is not easily discernable<br/>25 whether she has a well-defined scar or</p>   |

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| <p>1    scars versus just deposition of collagen<br/> 2    in the tissue surrounding the mesh.<br/> 3       Q. And if the mesh itself is<br/> 4    the cause of the -- strike that.<br/> 5       Mesh doesn't cause scar<br/> 6    tissue unless there's an incision related<br/> 7    to that, is that correct?<br/> 8       A. No. One has to implant,<br/> 9    imbed the mesh or implant the mesh in the<br/> 10   site, one will develop, obviously,<br/> 11   disruption of the surrounding tissues.<br/> 12      Q. You say on the -- on page 5<br/> 13   that Mrs. Gross, also, had evidence of<br/> 14   chronic endometriosis in the uterus in<br/> 15   the specimen, possibly indicating that<br/> 16   she had or was susceptible to chronic<br/> 17   inflammation in her pelvic organ. Do you<br/> 18   see that?<br/> 19      A. Yes.<br/> 20      Q. Doctor, can you give an<br/> 21   opinion within a reasonable degree of<br/> 22   medical probability that Linda Gross was<br/> 23   susceptible to chronic inflammation in<br/> 24   her pelvic organs?<br/> 25      A. All I can say within a</p>  | <p>1    Q. So I want to make sure I<br/> 2   understand this. You are not giving an<br/> 3   opinion that Linda Gross was susceptible<br/> 4   to chronic inflammation in her pelvic<br/> 5   organs?<br/> 6      MR. SNELL: Objection to<br/> 7   form.<br/> 8      A. Other than the inflammation<br/> 9   she had in her uterus.<br/> 10     Q. Doctor, you saw in the<br/> 11   slides that there were entrapment of<br/> 12   multiple nerves?<br/> 13     A. Correct.<br/> 14     Q. You can't tell us within a<br/> 15   reasonable degree of medical probability<br/> 16   as to how those nerves became entrapped?<br/> 17     MR. SNELL: Objection to<br/> 18   form.<br/> 19   BY MR. MAZIE:<br/> 20     Q. Correct?<br/> 21     A. They are a response to the<br/> 22   surgical reparative process.<br/> 23     Q. How do you know that?<br/> 24     A. Because they're occurring in<br/> 25   the site of surgery.</p>   |
| <p style="text-align: center;">Page 71</p> <p>1    degree of medical probability is that she<br/> 2   had inflammation in her pelvic organs.<br/> 3   The -- at least involving the uterus.<br/> 4   More than that, I can't say.<br/> 5      Q. And what you are saying is<br/> 6   she had endometriosis?<br/> 7      A. No. Endometritis and<br/> 8   endometriosis is two different things.<br/> 9      Q. You're saying she had<br/> 10   evidence of endometritis in her uterus?<br/> 11     A. In the lining of the --<br/> 12   endometrial lining of the uterus, she had<br/> 13   inflammation.<br/> 14     Q. You can't give an opinion<br/> 15   within a reasonable degree of medical<br/> 16   probability as whether or not she was<br/> 17   susceptible to chronic inflammation in<br/> 18   her pelvic organs outside of the uterine<br/> 19   lining?<br/> 20     MR. SNELL: Objection to<br/> 21   form.<br/> 22     A. Of the other pelvic organs<br/> 23   that I examined, which included the<br/> 24   cervix and the fallopian tubes, she did<br/> 25   not have inflammation of those sites.</p> | <p style="text-align: center;">Page 73</p> <p>1    Q. You mean an actual area<br/> 2   where there was incision?<br/> 3      A. Yes. There was implanting<br/> 4   of -- there was an incision, there was<br/> 5   placement of mesh, there was removal of<br/> 6   mesh. There are multiple procedures<br/> 7   taking place in those tissues that will<br/> 8   lead to fibrosis and surrounding of nerve<br/> 9   tissue, nerve fibers.<br/> 10     Q. We, also, know that the mesh<br/> 11   can cause fibrosis as well; correct?<br/> 12     A. Yes, but it's a natural<br/> 13   response to any surgical procedure,<br/> 14   whether regardless of whether you use<br/> 15   mesh or not, that you will see nerve<br/> 16   fibers enveloped or surrounded by fibrous<br/> 17   tissue.<br/> 18     Q. You can't tell us within a<br/> 19   reasonable degree of medical probability<br/> 20   as to whether those nerves that were<br/> 21   entrapped were the result of the actual<br/> 22   surgical process or whether they were the<br/> 23   result of fibrosis due to the mesh<br/> 24   itself?<br/> 25     MR. SNELL: Objection to</p> |

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| <p>1                   form.</p> <p>2                   A. There's absolutely no way</p> <p>3                   anyone scientifically can separate those</p> <p>4                   two processes.</p> <p>5                   Q. Now, you talked about the</p> <p>6                   fact that you saw a neuroma. What is a</p> <p>7                   neuroma?</p> <p>8                   A. A neuroma, in this case, is</p> <p>9                   what's called a traumatic neuroma. It is</p> <p>10                  secondary to disruption or transection</p> <p>11                  of nerve, and it subsequently leads to</p> <p>12                  the proliferation of little nerve fibers</p> <p>13                  that extend out from the end of the</p> <p>14                  disrupted segment.</p> <p>15                  Q. Could that neuroma have been</p> <p>16                  caused by a reaction to the mesh?</p> <p>17                  A. No. It's a reaction to</p> <p>18                  transection. It's a surgical process.</p> <p>19                  Q. How do we know that?</p> <p>20                  A. Because that's how traumatic</p> <p>21                  neuromas develop. They're either</p> <p>22                  disrupted by trauma, external trauma or</p> <p>23                  they're disrupted by iatrogenic trauma.</p> <p>24                  They are not responding to the presence</p> <p>25                  of surrounding mesh.</p> | <p>1                   changes depending on how much mesh is in</p> <p>2                   the female body?</p> <p>3                   MR. SNELL: Objection to</p> <p>4                   form.</p> <p>5                   A. Have I studied that myself,</p> <p>6                   no.</p> <p>7                   Q. Are you aware of any</p> <p>8                   literature that speaks to that issue?</p> <p>9                   A. No.</p> <p>10                  Q. Can you tell us within a</p> <p>11                  reasonable degree of medical probability</p> <p>12                  as to how this amount of mesh that's</p> <p>13                  contained within the Prolift system will</p> <p>14                  affect the female body as opposed to a</p> <p>15                  smaller amount of mesh used in several</p> <p>16                  sutures?</p> <p>17                  MR. SNELL: Objection to</p> <p>18                  form.</p> <p>19                  A. It's a quantitative process.</p> <p>20                  Where you have mesh, there are areas in</p> <p>21                  which there is adjacent fibrosis and</p> <p>22                  adjacent inflammatory response, in some</p> <p>23                  areas. In other areas, there's almost</p> <p>24                  none. Where you have a suture or</p> <p>25                  sutures, the response is localized to the</p>  |
| <p style="text-align: center;">Page 75</p> <p>1                  Q. How many neuromas did you</p> <p>2                  see?</p> <p>3                  A. One.</p> <p>4                  Q. And is the reason that you</p> <p>5                  arrive at the opinion that the neuroma</p> <p>6                  was traumatic in nature due to the</p> <p>7                  transection because there was no mesh</p> <p>8                  next to it or adjacent to it?</p> <p>9                  A. No. That's the</p> <p>10                 pathophysiologic mechanism by which</p> <p>11                 traumatic neuromas develop.</p> <p>12                 Q. Do you have an opinion as to</p> <p>13                 whether or not the mesh itself migrates</p> <p>14                 within the female body?</p> <p>15                 A. I do not, no. I have no</p> <p>16                 opinion.</p> <p>17                 Q. You say in your opinion that</p> <p>18                 Mrs. Gross did not -- I'm sorry, strike</p> <p>19                 that.</p> <p>20                 You say that in your opinion</p> <p>21                 Ms. Gross had an unremarkable response to</p> <p>22                 the Ethicon mesh, is that correct?</p> <p>23                 A. Correct.</p> <p>24                 Q. Have you studied whether and</p> <p>25                 to what extent the inflammatory response</p>  | <p style="text-align: center;">Page 77</p> <p>1                  presence of the suture. It does not</p> <p>2                  spread out through the tissue.</p> <p>3                  Q. Where there's mesh, such as</p> <p>4                  the Prolift mesh, do you know if that</p> <p>5                  inflammatory response builds on itself?</p> <p>6                  A. I don't understand that</p> <p>7                  question.</p> <p>8                  Q. Where there's more mesh,</p> <p>9                  such as the amount of mesh we have in the</p> <p>10                 Prolift system, do you know if that</p> <p>11                 insights a much greater multiple of</p> <p>12                 inflammatory response and/or fibrosis as</p> <p>13                 opposed to a smaller amount of mesh you</p> <p>14                 would see in a couple of sutures?</p> <p>15                 MR. SNELL: Objection to</p> <p>16                 form. Go ahead.</p> <p>17                 A. The response is associated</p> <p>18                 with the mesh fibers themselves. It's</p> <p>19                 not going -- obviously, if you have</p> <p>20                 multiple fibers, just as if you had</p> <p>21                 multiple sutures in a tissue you would</p> <p>22                 have quantitatively more inflammation in</p> <p>23                 total, but it's a question of whether the</p> <p>24                 mesh fiber has elicited an inflammatory</p> <p>25                 response and how much of it is elicited.</p> |

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| <p>1    In many areas, the mesh is not elicited,<br/> 2    a significant or, if any, inflammatory<br/> 3    response in other areas, there's more of<br/> 4    an inflammatory response. Obviously, if<br/> 5    you have more mesh, you potentially can<br/> 6    have more inflammation.</p> <p>7    Q. Are you aware of any<br/> 8    literature, Doctor, that talks about the<br/> 9    multiplication effect where there's more<br/> 10   mesh?</p> <p>11   A. I'm not you aware of it and<br/> 12   biologically it makes no sense.</p> <p>13   Q. Have you reviewed any of<br/> 14   Linda Gross' medical records?</p> <p>15   A. I reviewed some portions of<br/> 16   them. Obviously, I reviewed the<br/> 17   operative reports and the surgical<br/> 18   pathology reports.</p> <p>19   Q. Do you have any opinion as<br/> 20   to whether and to what extent Linda Gross<br/> 21   suffers from chronic pain as a result of<br/> 22   the mesh?</p> <p>23   A. I'm aware she's had<br/> 24   complaints of chronic pain. Whether it's<br/> 25   due to the mesh or not, I don't know.</p> | <p>1    was held off the video record:)</p> <p>2    MR. MAZIE: We are here with<br/> 3    the understanding of taking the<br/> 4    deposition of Dr. Factor with<br/> 5    regard to both the Gross and the<br/> 6    Wicker case. I arrived here today<br/> 7    without prior warning. And Mr.<br/> 8    Snell told me that he was going to<br/> 9    refuse to allow the Doctor to<br/> 10   answer questions concerning the<br/> 11   Wicker case. Is that correct?</p> <p>12   MR. SNELL: You're patently<br/> 13   wrong. You were told by Kelly<br/> 14   Crawford that we were not<br/> 15   producing Dr. Factor, we object to<br/> 16   producing him -- producing Dr.<br/> 17   Factor in the Wicker case that in<br/> 18   light of the fact that, A., Dr.<br/> 19   Faulk (ph) is a new expert and he<br/> 20   has not been deposed. There's a<br/> 21   motion pending on him. B, Dr.<br/> 22   Welsh has not even been deposed<br/> 23   yet on Wicker. Therefore, we did<br/> 24   not believe it would be pertinent<br/> 25   or right to produce Dr. Factor in</p> |
| Page 79   | Page 81  |
| <p>1    Q. I'm to go through some of<br/> 2    the slides. I'm going to show you<br/> 3    Doctor, what has been marked as Factor 1,<br/> 4    which is sample CR07-8397. These are<br/> 5    slides you have seen before; correct?</p> <p>6    A. Just the ones I got this<br/> 7    morning, or this afternoon.</p> <p>8    Q. But the --</p> <p>9    A. I saw the slides. I saw<br/> 10   these pictures today.</p> <p>11   Q. Right. But you have seen<br/> 12   these slides before?</p> <p>13   A. Oh, absolutely.</p> <p>14   Q. Let's turn to -- I want to<br/> 15   start with -- I guess we'll start with<br/> 16   the 13th slide.</p> <p>17   A. What is the picture?</p> <p>18   MR. MAZIE: Okay. Why don't<br/> 19   we change tape.</p> <p>20   VIDEOGRAPHER: The time is<br/> 21   now 3:30. This is the end of Disc<br/> 22   Number 1. We are now going off<br/> 23   the record.</p> <p>24   - - -</p> <p>25   (Whereupon, the following</p>   | <p>1    the Wicker case concerning that<br/> 2    plaintiff's experts have not even<br/> 3    been disclosed, let alone one of<br/> 4    may not be allowed to so testify<br/> 5    in the Wicker case.</p> <p>6    So your representation is<br/> 7    wrong. Whether you were copied on<br/> 8    the e-mail to your partner, Adam<br/> 9    Slater, I frankly did not go back<br/> 10   and check that.</p> <p>11   MR. MAZIE: I was aware you<br/> 12   were taking that position, but the<br/> 13   judge had said that you should<br/> 14   take whatever you can with regard<br/> 15   to Dr. Welsh. You were given the<br/> 16   opportunity. He was not finished<br/> 17   for whatever reason. He was<br/> 18   prepared to stay. Kelly decided<br/> 19   not to stay. And in either event,<br/> 20   the Judge said that we should go<br/> 21   ahead and take Dr. Factor on both<br/> 22   cases regardless.</p> <p>23   MR. SNELL: It's my<br/> 24   understanding that was not what<br/> 25   happened, that the court reporter</p>                                      |

21 (Pages 78 to 81)

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| <p>1       needed to leave. The Judge said<br/> 2       we should focus on Gross first,<br/> 3       that's why Kelly focused on Gross<br/> 4       first and the Judge has not said<br/> 5       that Dr. Factor should be deposed<br/> 6       on Wicker in addition to Gross as<br/> 7       we sit here today at this<br/> 8       deposition. So I think that's<br/> 9       attorney/lawyer argument, and if<br/> 10      there's a disagreement, it's<br/> 11      amongst the counsel.</p> <p>12      MR. MAZIE: So we're clear,<br/> 13      to the extent you do not allow me<br/> 14      to ask questions concerning Wicker<br/> 15      and we're not getting in touch<br/> 16      with the Judge, we'll seek to move<br/> 17      to bar Dr. Factor's testimony in<br/> 18      the Wicker case. And to the<br/> 19      extent the Judge does not grant<br/> 20      that, we're going to ask that the<br/> 21      deposition take place at our<br/> 22      office at our convenience. Okay.</p> <p>23      MR. SNELL: We are fine with<br/> 24      producing Dr. Factor for the<br/> 25      Wicker case. And Dr. Factor,</p>   | <p>1       deposed on Wicker. But at this<br/> 2       point, he should be after Dr.<br/> 3       Welsh and after the motion is<br/> 4       decided on plaintiff's newly<br/> 5       disclosed, last minute expert on<br/> 6       the amyloidosis pertinent to the<br/> 7       Wicker case, who has refused Dr.<br/> 8       Factor's report and opines about<br/> 9       it.</p> <p>10      MR. MAZIE: I want to place<br/> 11      on the record that the first time<br/> 12      amyloidosis was ever raised was by<br/> 13      Dr. Factor and we turned around<br/> 14      and produced an expert within a<br/> 15      week or less and that was, by the<br/> 16      way, close to a month ago.</p> <p>17      MR. SNELL: The fact that<br/> 18      Dr. Welsh did not recognize it, I<br/> 19      cannot speak to that.</p> <p>20      MR. MAZIE: Okay. It's<br/> 21      there.</p> <p style="text-align: center;">- - -</p> <p style="text-align: center;">(Whereupon, a discussion was<br/> held off the record.)</p> <p style="text-align: center;">- - -</p> |
| <p style="text-align: center;">Page 83</p> <p>1       you're fine with giving a<br/> 2       deposition in the Wicker case.</p> <p>3       THE WITNESS: I have no<br/> 4       problem giving a deposition, but<br/> 5       it limits the number of days that<br/> 6       you have available because I often<br/> 7       have to be here at the hospital<br/> 8       for portions of those days.</p> <p>9       MR. SNELL: So we will<br/> 10      produce Dr. Factor here, and it<br/> 11      will be done -- I would like to<br/> 12      put something else on the record.<br/> 13      We offered to move the deposition<br/> 14      in toto until after Dr. Welsh was<br/> 15      deposed. And I believe Dr. Factor<br/> 16      gave a date of December 19th in<br/> 17      response to Mr. Mazie's dates that<br/> 18      he provided for potential<br/> 19      availability in December.</p> <p>20      So, that was an offer that<br/> 21      we made that was rejected and<br/> 22      we've never stated our position<br/> 23      was otherwise. So, Dr. Factor --<br/> 24      I'm more than willing to produce<br/> 25      him. He's more than willing to be</p> | <p style="text-align: center;">Page 85</p> <p>1       VIDEOGRAPHER: The time is<br/> 2       now 3:42. We are back on the<br/> 3       record.</p> <p>4       BY MR. MAZIE:</p> <p>5       Q. Doctor, I'm showing you what<br/> 6       has been, I think, considered to be slide<br/> 7       number 14, which is part of Factor 1.<br/> 8       Why don't you hold that up for the<br/> 9       camera, so we're all on the same page?</p> <p>10      MR. SNELL: I think you've<br/> 11      identified it as the 13th slide.</p> <p>12      MR. MAZIE: It's 13th, but<br/> 13      if you include the first page,<br/> 14      it's the 14th.</p> <p>15      BY MR. MAZIE:</p> <p>16      Q. Doctor, can you tell us what<br/> 17      is going on in that slide?</p> <p>18      MR. SNELL: Objection to<br/> 19      form.</p> <p>20      MR. MAZIE: What is the<br/> 21      objection?</p> <p>22      MR. SNELL: What is going<br/> 23      on?</p> <p>24      MR. MAZIE: Yes.</p> <p>25      BY MR. MAZIE:</p>  |

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| <p>1 Q. What do you see?<br/> 2 A. There are number of fiber<br/> 3 mesh spaces with some residual mesh<br/> 4 material. A lot of it has been disrupted<br/> 5 by technical artifact -- the sectioning<br/> 6 of the tissue. There is a longitudinal<br/> 7 vessel running obliquely across the<br/> 8 humoids (ph). There's several small<br/> 9 vessels off to one side, and there are<br/> 10 inflammatory cells, including what<br/> 11 appears to be lymphocytes and macrophages<br/> 12 along with a few multi-nucleated giant<br/> 13 cells.</p> <p>14 Q. Doctor, fair to say there's<br/> 15 active chronic inflammation on this<br/> 16 slide?</p> <p>17 MR. SNELL: Objection to<br/> 18 form.</p> <p>19 THE WITNESS: There's<br/> 20 inflammation. Again, there's no<br/> 21 way to determine that this is<br/> 22 active.</p> <p>23 BY MR. MAZIE:</p> <p>24 Q. And there's, at least, one<br/> 25 or two giant cells?</p>  | <p>1 mesh fibers were is fibrosis?<br/> 2 A. It is around the fibers and<br/> 3 between the fibers, yes.<br/> 4 Q. You can't give us an opinion<br/> 5 as to what the cause of that fibrosis is<br/> 6 in this tissue sample from Linda Gross,<br/> 7 correct?</p> <p>8 MR. SNELL: Objection to<br/> 9 form.</p> <p>10 A. It's part of the process of<br/> 11 the implantation of the mesh and the<br/> 12 surgical ailment.</p> <p>13 Q. Can you tell whether or not<br/> 14 the surgical fibers themselves caused the<br/> 15 fibrosis that you see in this slide,<br/> 16 number 15?</p> <p>17 MR. SNELL: Objection.</p> <p>18 A. There's no way to<br/> 19 specifically ascribe the fibrosis to the<br/> 20 mesh. In fact, in the central portion of<br/> 21 the field, there are virtually no fibers<br/> 22 and there's still fibrosis and fibrosis<br/> 23 extends beyond the mesh fibers. So<br/> 24 trying to directly relate the fibrosis to<br/> 25 the mesh is not possible.</p> |
| <p>1 A. There are several giant<br/> 2 cells, both off -- slightly away from the<br/> 3 fibers as well as appearing to be near<br/> 4 the fibers.</p> <p>5 Q. There's chronic inflammation<br/> 6 adjacent to the mesh fibers where the<br/> 7 chronic fibers were?</p> <p>8 A. Chronic inflammation is<br/> 9 between the mesh fibers. It's, actually,<br/> 10 closest to the blood vessel that runs<br/> 11 obliquely through the field.</p> <p>12 Q. Just so we're clear, there<br/> 13 is chronic inflammation between the mesh<br/> 14 fibers; correct?</p> <p>15 A. That's just what I said.</p> <p>16 Q. And there are, also, giant<br/> 17 cells there?</p> <p>18 A. There's, at least, one giant<br/> 19 cell in that particular area.</p> <p>20 Q. Let's turn to the 15th<br/> 21 slide. Fair to say that all of the pink<br/> 22 stuff you see on this slide is fibrosis?</p> <p>23 A. Yes.</p> <p>24 Q. And within or surrounding<br/> 25 the mesh fibers that you see or where the</p> | <p>1 Q. You can't tell us one way or<br/> 2 the other, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Next, Number 16, do you see<br/> 5 chronic inflammation around the mesh in<br/> 6 the slide?</p> <p>7 A. Well, this is the same field<br/> 8 as the higher power that we saw in the<br/> 9 previous, the number 13 or 14, whatever<br/> 10 that number was.</p> <p>11 Q. Can you see extensive<br/> 12 fibrosis in this slide?</p> <p>13 A. There is fibrosis that<br/> 14 extends around the mesh fibers and<br/> 15 extends away from the mesh fibers. The<br/> 16 area off to the upper right has no mesh<br/> 17 fibers and has the same fibrosis<br/> 18 elsewhere.</p> <p>19 Q. Let's go to the 26th slide,<br/> 20 which looks like this.</p> <p>21 A. That's the same field as we<br/> 22 have already discussed.</p> <p>23 Q. Okay. That's it.</p> <p>24 MR. SNELL: Why don't we<br/> 25 call it, is it CR078 --</p>   |

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| <p>1           THE WITNESS: They're all<br/>2           the same, unfortunately.<br/>3    BY MR. MAZIE:<br/>4      Q. This shows chronic<br/>5      inflammation, this slide?<br/>6      A. This is the same field that<br/>7      we saw.<br/>8      Q. Let's go two more, number<br/>9      28. We haven't talked about this one<br/>10     yet, have we?<br/>11     A. Not to my knowledge, no.<br/>12     Q. This shows fibrosis<br/>13     surrounding the mesh fibers?<br/>14     A. Yes, with virtually no<br/>15     inflammation.<br/>16     Q. There's fibrosis surrounding<br/>17     the mesh fibers, correct?<br/>18     A. I just said so, yes.<br/>19     Q. And the fibers themselves<br/>20     here, the fibrosis is, actually, pulling<br/>21     the fibers together; correct?<br/>22     A. Well you --<br/>23     MR. SNELL: Object to form.<br/>24     THE WITNESS: -- you can't<br/>25     make that conclusion. There's</p>   | <p>1           next one, the fourth one we're looking<br/>2           at. It's this one.<br/>3           A. No. It's not that one.<br/>4           It's this one.<br/>5           Q. Okay. And it's Number 33.<br/>6           MR. SNELL: Let me get that.<br/>7           What is in front of it?<br/>8           THE WITNESS: It's the<br/>9           same.<br/>10          MR. MAZIE: Fourth one of<br/>11          this series.<br/>12          MR. SNELL: You are saying<br/>13          this is page what?<br/>14          MR. MAZIE: 33.<br/>15    BY MR. MAZIE:<br/>16      Q. Doctor, what do you see<br/>17      there?<br/>18      A. I see a portion of fiber. I<br/>19      see a few inflammatory cells. I see some<br/>20      spaces off to the upper left.<br/>21      MR. MAZIE: I need to pick<br/>22      this up. I'm sorry.<br/>23      VIDEOGRAPHER: The time is<br/>24      now 3:50. We're going off the<br/>25      record.</p>  |
| <p style="text-align: center;">Page 91</p> <p>1           fibrosis and there are fibers, but<br/>2           there's no way you can make a<br/>3           conclusion, especially because<br/>4           there's, also, artifacts in this<br/>5           tissue that the whole -- that is<br/>6           at 12 o'clock, there's a tear in<br/>7           the tissue which disrupts the<br/>8           fibrous tissue.<br/>9    BY MR. MAZIE:<br/>10     Q. Doctor, do you know one way<br/>11     or the other whether the fibrosis is<br/>12     affecting the distance between the mesh<br/>13     fibers?<br/>14     A. I don't know.<br/>15     Q. Okay. Let's go to Number<br/>16     33, which looks like that. You might<br/>17     want to count it from the last one, which<br/>18     is 26?<br/>19     A. Is it this one?<br/>20     Q. There's a number of them in<br/>21     a row that look alike. So, let's see.<br/>22     The first one you see of this, looks like<br/>23     that.<br/>24     A. Yes.<br/>25     Q. So not that one, not the</p> | <p style="text-align: center;">Page 93</p> <p>1           - - -<br/>2           (Whereupon, a brief recess<br/>3           was taken.)<br/>4           - - -<br/>5           VIDEOGRAPHER: The time is<br/>6           now 3:51. We are back on the<br/>7           record.<br/>8    BY MR. MAZIE:<br/>9      Q. Doctor, you see the<br/>10     degradation of that mesh fiber there?<br/>11     A. I see changes associated<br/>12     with the edge of the mesh. I can't tell<br/>13     whether that's pre-existent degradation<br/>14     or changes associated with the sectioning<br/>15     because there artifacts associated with<br/>16     the sectioning. The mesh fiber,<br/>17     actually, can be seen in its entirety on<br/>18     the two photographs next, which shows<br/>19     polarization of that mesh fiber and shows<br/>20     it intact.<br/>21     Q. Let's go to Number 35. Do<br/>22     you see the polarized portion -- it's all<br/>23     polarized, but you see the colored<br/>24     portion in the middle of the mesh fiber?<br/>25     A. Yes.</p> |

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|    | Page 94                                   | Page 96 |                                    |
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| 1  | Q. Fair to say there's                    | 1       | Mazie, was -- before starting the  |
| 2  | degradation of that mesh fiber?           | 2       | deposition, he was informed by the |
| 3  | A. I don't know that's, in                | 3       | defense he was not to ask any      |
| 4  | fact, the case. There's tearing of the    | 4       | questions of Dr. Factor about the  |
| 5  | tissue. There's a -- what looks like      | 5       | Wicker case. And we are prepared   |
| 6  | connective tissue or inflammatory tissue  | 6       | to proceed and take the deposition |
| 7  | that's crossing that space. And I cannot  | 7       | fully on both cases, and we think  |
| 8  | tell whether that is degradation of the   | 8       | we should be permitted to fully    |
| 9  | surface or a portion of the surface or is | 9       | take the deposition today.         |
| 10 | a disruption secondary to sections        | 10      |                                    |
| 11 | artifact.                                 | 11      | THE COURT: Is the                  |
| 12 | Q. Just so we're clear --                 | 12      | deposition as to Gross completed?  |
| 13 | VIDEOGRAPHER: The time is                 | 13      | MR. MAZIE: Judge --                |
| 14 | now 3:52o. We're going off the            | 14      | MS. CRAWFORD: Kelly                |
| 15 | record.                                   | 15      | Crawford. I don't know if you're   |
| 16 | ---                                       | 16      | directing that at me.              |
| 17 | (Whereupon, a brief recess                | 17      | THE COURT: Go ahead, Kelly.        |
| 18 | was held.)                                | 18      | MS. CRAWFORD: I'm not at           |
| 19 | ---                                       | 19      | the deposition, Judge, but as I    |
| 20 | (Whereupon, the following                 | 20      | understand it, Mr. Snell can       |
| 21 | discussion was held off the video         | 21      | confirm, they're in the middle of  |
| 22 | record:)                                  | 22      | the Gross deposition regarding Dr. |
| 23 | ---                                       | 23      | Factor at this point and it's not  |
| 24 | THE COURT: Hello, Counsel.                | 24      | yet completed.                     |
| 25 | MR. SLATER: Hello, Judge.                 | 25      | MR. MAZIE: Judge, Dave             |
|    |   |         | Mazie. I will be done with the     |
|    | Page 95                                   | Page 97 |                                    |
| 1  | THE COURT: Hi, how are you,               | 1       | Gross deposition within the next   |
| 2  | Adam?                                     | 2       | 20 to 30 minutes and ready to      |
| 3  | MR. SLATER: Fine, thanks.                 | 3       | proceed and finish up with the     |
| 4  | How are you?                              | 4       | Wicker deposition, which quite     |
| 5  | The COURT: Good. So we                    | 5       | honestly, will not take more than  |
| 6  | have Adam Slater on the record and        | 6       | an hour.                           |
| 7  | Ms. Crawford.                             | 7       | MS. CRAWFORD: If you're            |
| 8  | MS. CRAWFORD: Kelly                       | 8       | prepared for defense's position,   |
| 9  | Crawford.                                 | 9       | Judge, just let us know.           |
| 10 | THE COURT: Okay, good. So                 | 10      | THE COURT: Go ahead, Kelly.        |
| 11 | we have a certified court reporter        | 11      | MS. CRAWFORD: We took Dr.          |
| 12 | taking down the record?                   | 12      | Welsh's deposition. Your Honor     |
| 13 | MR. MAZIE: Judge, it's Dave               | 13      | will recall at the last case       |
| 14 | Mazie and Burt Snell.                     | 14      | management conference this issue   |
| 15 | Unfortunately, we only have an            | 15      | came up in connection with the     |
| 16 | iPhone on speaker. It is next to          | 16      | defendant's pending motion to stay |
| 17 | the court reporter, but she's             | 17      | the Wicker specific case           |
| 18 | going to have some difficulty. So         | 18      | discovery. And we talked           |
| 19 | everyone needs to keep their              | 19      | specifically at the case           |
| 20 | voices up. We're at the                   | 20      | management conference about the    |
| 21 | deposition of Dr. Factor.                 | 21      | fact that the pathologist --       |
| 22 | THE COURT: So what is the                 | 22      | defendant's -- plaintiff's expert  |
| 23 | issue?                                    | 23      | pathologist is going to be deposed |
| 24 | MR. SLATER: The issue, your               | 24      | on the 16th before the Court was   |
| 25 | Honor, is that my partner, Dave           | 25      | going to have an opportunity to    |

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| <p>1 address that motion. And the<br/> 2 Court indicated that we should<br/> 3 start with Gross and, you know,<br/> 4 try the finish Gross and if there<br/> 5 was time available to move on to<br/> 6 Wicker. We did not start Wicker.<br/> 7 We completed Gross. But it had<br/> 8 been our position that we are not<br/> 9 prepared now prepared to produce<br/> 10 Dr. Factor and have him deposed on<br/> 11 the Wicker until we complete the<br/> 12 Welsh corresponding deposition in<br/> 13 Wicker, and that hasn't happened.</p> <p>14 THE COURT: Welsh would have<br/> 15 to go before Wicker?</p> <p>16 MS. CRAWFORD: Correct.</p> <p>17 THE COURT: Is he before?</p> <p>18 MS. CRAWFORD: That is our<br/> 19 position, Judge. We will recall<br/> 20 we had made the motion to stay<br/> 21 Wicker's specific case discovery.<br/> 22 We talked -- or I didn't talk at<br/> 23 that conference, Mary Ellen was my<br/> 24 mouthpiece because I couldn't<br/> 25 talk -- about the fact that we had</p>                                  | <p>1 case will be ready. But we're in<br/> 2 New York and ready to take the<br/> 3 deposition of Dr. Factor, and it<br/> 4 will be done.</p> <p>5 MS. CRAWFORD: Judge, I<br/> 6 don't want to get into an issue<br/> 7 about that. I started the<br/> 8 deposition on time. We took no<br/> 9 break, except for ten minutes so<br/> 10 the court reporter can quickly<br/> 11 shovel in something to eat. We<br/> 12 were there until 7 o'clock. I<br/> 13 rushed to try and finish the Gross<br/> 14 aspect of the deposition. We do<br/> 15 have a pending motion on this<br/> 16 issue. We are all spinning our<br/> 17 wheels trying to complete the<br/> 18 Gross specific discovery in order<br/> 19 to be ready for trial. And Dr.<br/> 20 Factor is willing to come back at<br/> 21 a later time after we had the<br/> 22 opportunity to take the Wicker<br/> 23 deposition from Dr. Welsh,<br/> 24 assuming that your Honor denies<br/> 25 the motion that's pending, which</p>   |
| <p style="text-align: center;">Page 99</p> <p>1 that deposition scheduled for<br/> 2 Friday and your Honor was going to<br/> 3 try to set up a call for --</p> <p>4 THE COURT: Right.</p> <p>5 MS. CRAWFORD: -- the week,<br/> 6 but everything got sort of busy.</p> <p>7 MR. SLATER: Your Honor,<br/> 8 it's Adam Slater. It doesn't<br/> 9 really make sense to us. Defense<br/> 10 counsel they took the deposition<br/> 11 they wanted to take. It was a<br/> 12 very long deposition and they<br/> 13 didn't finish, or they finished<br/> 14 Gross and didn't have time to do<br/> 15 the Wicker questioning. I don't<br/> 16 know how that impacts us on the<br/> 17 deposition of Dr. Factor. We just<br/> 18 want to get it done while we're<br/> 19 here. It's counsel's choice not<br/> 20 to finish. You know, it turns out<br/> 21 it seems like it was a strategy or<br/> 22 something. We don't really<br/> 23 understand why, or maybe we do<br/> 24 understand why they don't want us<br/> 25 to take Wicker discovery, so the</p> | <p style="text-align: center;">Page 101</p> <p>1 is still open.</p> <p>2 THE COURT: Okay.</p> <p>3 I have had an opportunity to<br/> 4 review the motion. I read the<br/> 5 papers on both sides. It was, I<br/> 6 think, important that both cases<br/> 7 be prepared and that they be<br/> 8 jointly prepared, but there comes<br/> 9 a practical point where it simply<br/> 10 becomes too much of a burden on<br/> 11 both sides to get ready for a case<br/> 12 that's not going to be the one<br/> 13 that's going at this point.</p> <p>14 I understand Mr. Slater's<br/> 15 concern that Wicker would be the<br/> 16 back up case. And Ms. Crawford,<br/> 17 at the last conference, had<br/> 18 indicated to me that there was<br/> 19 slim and no chance of a settlement<br/> 20 offer being made to resolve the<br/> 21 Gross case prior to trial. And<br/> 22 that, unless the defendants -- the<br/> 23 plaintiffs intended to dismiss it,<br/> 24 it would be going, barring some<br/> 25 unusual event such as a death or</p> |

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| <p>1 an injury or something.<br/>     2 Wicker just got treatment.<br/>     3 She needs to have the examination<br/>     4 and I think it's scheduled, right?<br/>     5 MR. SLATER: That happened<br/>     6 yesterday, Judge.<br/>     7 THE COURT: So his report<br/>     8 should still issue in a timely<br/>     9 fashion. That doesn't take up<br/>     10 counsel's time, except maybe to<br/>     11 discuss it with him, but it<br/>     12 doesn't take up significant time.<br/>     13 So, his -- the defense report<br/>     14 should issue, the Wicker defense<br/>     15 report, but I'm not going to<br/>     16 require that the rest of the<br/>     17 Wicker discovery take place<br/>     18 between now and the trial.<br/>     19 If anything happens to the<br/>     20 Gross trial, we'll immediately do<br/>     21 the Wicker discovery within a week<br/>     22 or two and move on to the Wicker<br/>     23 trial, but I'm assuming that's not<br/>     24 going to be necessary. There does<br/>     25 come a point where it's now the</p> | <p>1 Judge.<br/>     2 VIDEOGRAPHER: The time is<br/>     3 now 4:03. We are back on the<br/>     4 record.<br/>     5 BY MR. MAZIE:<br/>     6 Q. Doctor, just so I'm clear,<br/>     7 you have no opinion one way or the other<br/>     8 as to whether this represents degradation<br/>     9 of the mesh?<br/>     10 MR. SNELL: Objection to<br/>     11 form.<br/>     12 BY MR. MAZIE:<br/>     13 Q. As a natural process of the<br/>     14 mesh.<br/>     15 MR. SNELL: Objection to<br/>     16 form.<br/>     17 A. It cannot be determined<br/>     18 whether the changes that are present just<br/>     19 at the edge or the end of that fiber<br/>     20 represent any degree of degradation or<br/>     21 changes associated with the technical<br/>     22 processing of the tissue. The remaining<br/>     23 portion of that fiber as seen in the<br/>     24 polarized photograph appears to be smooth<br/>     25 and unremarkable.</p>   |
| <p style="text-align: center;">Page 103</p> <p>1 end of the week, it's going to be<br/>     2 December. Trial is in January.<br/>     3 We have, you know, a holiday week<br/>     4 in there, at least, simply a<br/>     5 couple different holidays, and I'm<br/>     6 not going to require -- so I'm<br/>     7 going to grant the defense motion<br/>     8 to stop the Wicker discovery<br/>     9 pending the outcome of the Gross<br/>     10 case.<br/>     11 The only thing that I am<br/>     12 going to require is that the<br/>     13 defense independent medical exam,<br/>     14 which has been done, that that<br/>     15 report issue in a timely fashion<br/>     16 as scheduled previously. And<br/>     17 then, basically, you will have<br/>     18 some clean-up depositions to do.<br/>     19 But we can move very quickly to<br/>     20 Wicker if we needed to. All<br/>     21 right?<br/>     22 MR. MAZIE: Thank you, your<br/>     23 Honor.<br/>     24 MR. SNELL: Thanks, Judge.<br/>     25 MR. SLATER: Thank you,</p>                | <p style="text-align: center;">Page 105</p> <p>1 Q. But you don't have an<br/>     2 opinion as to what the cause of what is<br/>     3 occurring at the end of that, whether<br/>     4 it's degradation, naturally occurring or<br/>     5 something else?<br/>     6 MR. SNELL: Objection to<br/>     7 form.<br/>     8 A. Correct.<br/>     9 Q. Let's go to slide number 51,<br/>     10 which to make it easier for you is the<br/>     11 5th from the end. Yes.<br/>     12 Fair to say that you see<br/>     13 mesh fibers here encased in or surrounded<br/>     14 by fibrosis?<br/>     15 A. I see mesh fibers with<br/>     16 fibrosis and I see fibrosis without mesh,<br/>     17 with spaces that I -- that are more<br/>     18 likely than not fat or disruption of the<br/>     19 tissue in the center and off on the far<br/>     20 right, but certainly the ones in the<br/>     21 center are not mesh, but there is fibrous<br/>     22 around it.<br/>     23 Q. You see multiple mesh fibers<br/>     24 or holes where fiber was, correct?<br/>     25 A. And there are multiple mesh</p> |

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| <p>1       fibers. There are a few tears in the<br/>2       tissue above the mesh on both sides and<br/>3       there is fibrosis around those fibers.<br/>4       Q. As you sit here today, you<br/>5       cannot tell us specifically what caused<br/>6       the fibrosis surrounding these mesh<br/>7       fibers?</p> <p>8            MR. SNELL: Objection to<br/>9            form.</p> <p>10          A. I've answered the question<br/>11       before that the fibrosis is part of the<br/>12       surgical repair process.</p> <p>13          Q. But you can't tell us<br/>14       whether it's the actual surgery as an<br/>15       insult to the tissue versus a cause<br/>16       instead by the mesh fibers themselves<br/>17       reacting with the tissue?</p> <p>18          MR. SNELL: Object to form.</p> <p>19          A. The fact that the fibrosis<br/>20       is present in this field as well as in<br/>21       many other fields without any mesh fibers<br/>22       immediately associated with it would<br/>23       argue that this is a process of surgical<br/>24       repair.</p> <p>25          Q. What about in the areas that</p> | <p>1       process.<br/>2       Q. Do you see any inflammation<br/>3       on that slide?<br/>4       A. I described the<br/>5       inflammation. There's macrophages and<br/>6       there may be a few lymphocytes scattered<br/>7       around, but the predominant cells are<br/>8       macrophages.<br/>9       Q. Put this grouping aside.<br/>10       And let's go to Welsh 14, and ask you to<br/>11       go -- these are numbered, so that will<br/>12       make it easier.<br/>13       MR. SNELL: Do you by chance<br/>14       have a copy?<br/>15       MR. MAZIE: No.<br/>16       MR. SNELL: I'm just going<br/>17       to look over.<br/>18       BY MR. MAZIE:<br/>19       Q. Doctor, go to 62. What do<br/>20       you see there?<br/>21       MR. SNELL: Objection to<br/>22       form.<br/>23       A. I see a central area which<br/>24       appears to be -- it's not forming a true<br/>25       granuloma, but it appears to be a</p>   |
| <p style="text-align: center;">Page 107</p> <p>1       immediately adjacent to the mesh fibers?<br/>2       A. It's the same fibrosis. So<br/>3       one can't -- as I pointed out earlier,<br/>4       one can't easily discriminate between<br/>5       fibrosis associated with repair versus<br/>6       fibrosis associated with mesh.<br/>7       Q. Can or can't?<br/>8       A. Cannot.<br/>9       Q. Let's go to the second to<br/>10       last slide, which is number 53. I'm<br/>11       sorry, third to the last slide. The one<br/>12       with the hemosiderin in the middle.<br/>13       A. Yes.<br/>14       Q. What do you see here,<br/>15       Doctor?<br/>16       A. I see fibrosis, some, I<br/>17       believe, small blood vessels cut<br/>18       longitudinally and I see multiple<br/>19       hemosiderin deposits and macrophage.<br/>20       Q. Does this slide demonstrate<br/>21       chronic injury?<br/>22       A. It demonstrates injury with<br/>23       chronicity because the collagen is mature<br/>24       and the macrophages are in response to<br/>25       the hemosiderin, so this is a chronic</p>                  | <p style="text-align: center;">Page 109</p> <p>1       granulomatis-type process with even at<br/>2       the low power, I think spindle cells,<br/>3       fiberglass and what happens to be<br/>4       hemosiderin and inflammatory cells.<br/>5       There's a space running vertically or<br/>6       relatively vertically which appears to be<br/>7       a blood vessel, but I'm not entirely<br/>8       sure. Portions of it appear to be blood<br/>9       vessel.<br/>10       Q. Do you see in -- is there,<br/>11       also, fibrosis?<br/>12       A. There's fibrous tissue<br/>13       around the central area of inflammation<br/>14       and hemosiderin.<br/>15       Q. Let's jump to number 70.<br/>16       It's fair to say this slide shows chronic<br/>17       inflammation?<br/>18       MR. SNELL: Objection to<br/>19       form.<br/>20       A. It's a terrible picture and<br/>21       it's difficult to make out, but there are<br/>22       what appears to be giant cells, some of<br/>23       them are multinucleated and lymphocytes<br/>24       with, at least, some of the giant cells<br/>25       appearing, even though it's difficult to</p> |

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| <p>1 make out on this exposure. It appears<br/>2 that they have hemosiderin within them or<br/>3 near them.</p> <p>4 Q. Do you see any mesh?</p> <p>5 A. No.</p> <p>6 Q. The amount of inflammation<br/>7 you see here, is that something you would<br/>8 expect from a normal surgical process<br/>9 without a foreign body?</p> <p>10 MR. SNELL: Objection to<br/>11 form.</p> <p>12 A. If this is an area that has<br/>13 had extensive bleeding and disruption,<br/>14 this is a normal response. There,<br/>15 obviously, has been bleeding because<br/>16 there's hemosiderin throughout the<br/>17 tissue. It's hard to make out the full<br/>18 extent of this process from this view and<br/>19 from the exposure.</p> <p>20 Q. Let's go to the next one,<br/>21 number 71. Can you interpret for me the<br/>22 cluster of dark cells in the pink area?</p> <p>23 A. There are --</p> <p>24 MR. SNELL: I object to the<br/>25 form. Are you -- any particular</p>            | <p>1 Q. It shows --</p> <p>2 A. Lower magnification.</p> <p>3 Q. Number 73 shows chronic<br/>4 inflammation?</p> <p>5 A. Yes.</p> <p>6 Q. It shows scarring?</p> <p>7 A. It shows fibrous tissue,<br/>8 yes.</p> <p>9 Q. Does it show nerve?</p> <p>10 A. It shows a longitudinal<br/>11 segment of myelinated nerve.</p> <p>12 Q. Is there mesh fiber shown?</p> <p>13 A. There are spaces, but I<br/>14 don't believe those are mesh spaces.</p> <p>15 Q. Why not?</p> <p>16 A. Because I believe they're<br/>17 too small. I believe that's fat.</p> <p>18 Q. When you say they're too<br/>19 small, again, you don't whether or not<br/>20 the mesh fibers themselves squeeze or<br/>21 contract?</p> <p>22 MR. SNELL: Objection.</p> <p>23 A. They don't change their<br/>24 diameter overall and all the spaces that<br/>25 we have seen which have mesh are much</p>  |
| <p style="text-align: center;">Page 111</p> <p>1 place you're referencing?</p> <p>2 MR. MAZIE: There are dark<br/>3 cells. I think he understands<br/>4 what I'm asking. There's an<br/>5 accumulation of the dark cells in<br/>6 the middle to left of the center.</p> <p>7 THE WITNESS: There are<br/>8 lymphocytes or they appear to be<br/>9 lymphocytes. There may be<br/>10 monocytes in there. It's hard to<br/>11 see whether or not there are<br/>12 macrophages, I think there are a<br/>13 few. There are -- there's, at<br/>14 least, one vessel, possibly<br/>15 represents the same vessel, cut in<br/>16 several planes, but there are<br/>17 vessels adjacent to this cluster<br/>18 of inflammatory cells.</p> <p>19 BY MR. MAZIE:</p> <p>20 Q. Let's go to 73, Doctor.</p> <p>21 A. 73.</p> <p>22 Q. Yes. Doctor, do you see<br/>23 chronic inflammation on the this slides?</p> <p>24 A. It's the same picture that<br/>25 we had before. It's the same field.</p> | <p style="text-align: center;">Page 113</p> <p>1 large than those three spaces that we see<br/>2 adjacent to the nerve.</p> <p>3 Q. Why don't you think they<br/>4 change their overall diameter?</p> <p>5 A. Because I see no evidence of<br/>6 it. The spaces are relatively the same<br/>7 size or the fibers that one can see with<br/>8 light microscopy, H&amp;E, light microscopy<br/>9 and with polarization show fibers that<br/>10 are of a similar size.</p> <p>11 Q. You're basing your opinion<br/>12 on the 18 or so slides that you've looked<br/>13 at?</p> <p>14 MR. SNELL: Object to the<br/>15 form.</p> <p>16 A. Yes.</p> <p>17 Q. Okay. You don't know<br/>18 whether and to what extent the mesh<br/>19 fibers contract because you haven't seen<br/>20 most of the mesh fibers within Linda<br/>21 Gross' body or pulled out of her body,<br/>22 correct?</p> <p>23 MR. SNELL: Objection to<br/>24 form.</p> <p>25 A. It's irrelevant what's been</p> |

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| <p>1 pulled out of her body. It's is<br/> 2 irrelevant what I haven't seen. What I<br/> 3 have seen is clear that the mesh fibers<br/> 4 show no evidence of retraction or<br/> 5 contraction. The spaces are enlarged.<br/> 6 Some are larger than one would<br/> 7 anticipate, but that is a technical<br/> 8 artifact of dragging with spaces and<br/> 9 disrupting the fibers. These spaces that<br/> 10 are off to the right, at least from this<br/> 11 view, and, obviously, this is showing the<br/> 12 whole field, I do not believe are mesh,<br/> 13 nor is there any mesh evidence with any<br/> 14 mesh fiber that I can see at this<br/> 15 magnification within those spaces.</p> <p>16 Q. Doctor, you understand that<br/> 17 there is clear testimony from both sides<br/> 18 that the mesh contracts within the female<br/> 19 body? Do you know that?</p> <p>20 A. Well, there's contraction of<br/> 21 scar tissue or fibrous tissue which is<br/> 22 recognized with any scar. All scars will<br/> 23 retract to some degree. Fibrous tissue,<br/> 24 and obviously when one cuts the skin,<br/> 25 gets a scar. One knows that scars</p> | <p>1 form.<br/> 2 A. Again, I don't know that --<br/> 3 that indicates or that implies that the<br/> 4 mesh has an active process of contraction<br/> 5 independent of what is going on in its<br/> 6 implantation site and that's not the<br/> 7 case. The mesh is implanted in the<br/> 8 tissue. It elicits an inflammatory and<br/> 9 fibrous reaction and that fibrous<br/> 10 reaction retraction contracts. I have no<br/> 11 evidence that the mesh itself is an<br/> 12 active participant in that process.</p> <p>13 Q. I understand that. I think<br/> 14 we're saying the same thing. So once the<br/> 15 mesh is implanted, it interacts with the<br/> 16 female tissue; correct?</p> <p>17 A. Well, it interacts with the<br/> 18 fibrous tissue that's part of the healing<br/> 19 process.</p> <p>20 Q. And then that fibrous tissue<br/> 21 causes the mesh itself to contract in<br/> 22 size; correct?</p> <p>23 MR. SNELL: Objection.</p> <p>24 A. Potentially, yes.</p> <p>25 Q. Page 75, last one on this.</p>  |
| <p style="text-align: center;">Page 115</p> <p>1 retract or fibrous tissue retract. So<br/> 2 that's not unusual. It's not unique. It<br/> 3 has nothing to do specifically with the<br/> 4 mesh. Its the natural property of the<br/> 5 fibrous tissue.</p> <p>6 Q. Listen my question.</p> <p>7 A. I did.</p> <p>8 Q. You understand that it's<br/> 9 undisputed that the mesh contracts.</p> <p>10 MR. SNELL: I object to the<br/> 11 form. That's actually a<br/> 12 misrepresentation.</p> <p>13 A. I don't know that that's the<br/> 14 case. It is -- since the mesh is<br/> 15 enveloped or surrounded by fibrous tissue<br/> 16 that extends through the mesh pores, the<br/> 17 process of retraction or contraction is<br/> 18 potentially only due to the fibrous<br/> 19 tissue healing.</p> <p>20 Q. Either way, whether it's the<br/> 21 fibrous tissue causing the contraction or<br/> 22 the mesh itself causing the contraction,<br/> 23 you understand that the mesh once<br/> 24 implanted contracts, correct?</p> <p>25 MR. SNELL: Objection to</p>   | <p style="text-align: center;">Page 117</p> <p>1 Doctor, you see a nerve there?</p> <p>2 A. There's a nerve cut across<br/> 3 by the -- whatever that disruption is in<br/> 4 the picture. But, yes, there's a nerve.</p> <p>5 Q. And there's chronic<br/> 6 inflammation near the nerve?</p> <p>7 A. There's chronic inflammation<br/> 8 near the nerve, but it's associated with<br/> 9 fat.</p> <p>10 Q. Do you see any fibers, mesh<br/> 11 fibers?</p> <p>12 A. I do not know what is off to<br/> 13 the far left. I don't believe it is, but<br/> 14 it possibly could be, but all the<br/> 15 remaining spaces are fat tissue, both<br/> 16 above the nerve and below the nerve.</p> <p>17 Q. In order to have pain, is it<br/> 18 your position you have to have neuritis?</p> <p>19 A. You either have to have<br/> 20 neuritis or evidence of disruption,<br/> 21 damage to the nerve fiber. Whether the<br/> 22 surrounding of nerves by fibrous tissue<br/> 23 is sufficient to produce pain is<br/> 24 unknowable. There is potential for<br/> 25 secretion of irritant materials that</p> |

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| <p>1 could lead to pain, but there's<br/> 2 absolutely no way biologically to<br/> 3 determine any one nerve or any group of<br/> 4 nerves is the source of a particular pain<br/> 5 when you are dealing with nerves of the<br/> 6 size. The absence of inflammation, the<br/> 7 absence of neuroma formation with the<br/> 8 exception of that one that I mentioned<br/> 9 earlier, is a normal response of nerves<br/> 10 in tissue that is undergoing fibrosis and<br/> 11 some degree of inflammation.</p> <p>12 Q. Just so we're clear, you<br/> 13 can't tell one way or the other whether<br/> 14 fibrosis is causing a nerve to cause<br/> 15 pain?</p> <p>16 A. Nobody can.</p> <p>17 Q. Okay. All right. Put that<br/> 18 one away. Let's see what else we have<br/> 19 here.</p> <p>20 Number 12. Welsh 12, I will<br/> 21 ask you to look at a couple of slides<br/> 22 here. Number 36, which is the second<br/> 23 slide, what do you see there?</p> <p>24 A. I see.</p> <p>25 MR. SNELL: Objection to</p> | <p>1 look at number 8, and look at number 3 on<br/> 2 this. Do you see a nerve there?</p> <p>3 A. I do.</p> <p>4 Q. Is it normal or degenerated?</p> <p>5 A. It looks partially torn.</p> <p>6 The portion of it that appears to be<br/> 7 unaffected off to the center towards the<br/> 8 left appears normal. It looks like there<br/> 9 is some disruption of the nerve possibly<br/> 10 by a sectioning.</p> <p>11 Q. You can't tell us within a<br/> 12 reasonable degree of medical probability<br/> 13 as to what disrupted this nerve?</p> <p>14 MR. SNELL: Objection to<br/> 15 form.</p> <p>16 A. Well, since only a portion<br/> 17 of it is affected and there's no<br/> 18 inflammation associated with it and no<br/> 19 difference in the fibrosis that's around<br/> 20 it, I believe it's due to the sectioning.</p> <p>21 Q. Doctor, what is around the<br/> 22 fibrous?</p> <p>23 A. Fibrous tissue and a few<br/> 24 inflammatory cells.</p> <p>25 Q. Is there some collagen as</p> |
| <p style="text-align: center;">Page 119</p> <p>1 form.</p> <p>2 A. I see a nerve that's been, I<br/> 3 assume, inked or surrounded by ink that<br/> 4 looks to be irregular and surrounded by<br/> 5 fibrous tissue.</p> <p>6 Q. And go to number 47, please.</p> <p>7 A. 47, you said?</p> <p>8 Q. 47. Do you see a nerve<br/> 9 there?</p> <p>10 A. There are nerves or there<br/> 11 is, at least, one nerve off to the right.<br/> 12 I don't know what the tissue is in the<br/> 13 center of the field.</p> <p>14 Q. Okay. Can you tell whether<br/> 15 the nerve itself is degenerated?</p> <p>16 A. The nerve that I see off to<br/> 17 the right is not. I don't know what the<br/> 18 remaining tissue is.</p> <p>19 Q. Is the nerve itself imbedded<br/> 20 in the fibrosis, the one you see?</p> <p>21 A. Well, there's a space around<br/> 22 the nerve, but that's probably<br/> 23 retraction. So, yes, the nerve is<br/> 24 surrounded by fibrous tissue.</p> <p>25 Q. Put that one away. Let's</p>       | <p style="text-align: center;">Page 121</p> <p>1 well?</p> <p>2 A. That's fibrous tissue.</p> <p>3 Collagen is fibrous tissue.</p> <p>4 Q. Let's go to number 4. Does<br/> 5 this show a damaged or dying nerve<br/> 6 surrounded by collagen?</p> <p>7 MR. SNELL: Objection to<br/> 8 form.</p> <p>9 A. It shows a nerve. It's not<br/> 10 damaged or dying.</p> <p>11 Q. What do you see?</p> <p>12 A. I see a nerve in three<br/> 13 different planes, or two different<br/> 14 planes.</p> <p>15 Q. Can you tell whether or not<br/> 16 the nerve itself is degenerated?</p> <p>17 A. It does not look<br/> 18 degenerated.</p> <p>19 Q. Turn to number 5. Do you<br/> 20 see a nerve there?</p> <p>21 A. It's the same nerve, I<br/> 22 believe.</p> <p>23 Q. And can you tell whether<br/> 24 that nerve is degenerated?</p> <p>25 A. It wasn't degenerated on the</p>  |

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| <p>1 high magnification, so it's not<br/>2 degenerated on this, either. It, also,<br/>3 shows that there's multiple technical<br/>4 artifacts in the tissue immediately<br/>5 around the nerve.</p> <p>6 Q. Number 13, do you see the<br/>7 nerve?</p> <p>8 A. There are three nerves.</p> <p>9 Q. Is there fibrous tissue<br/>10 surrounding the nerves?</p> <p>11 A. Above the nerve, there is<br/>12 fibrous tissue and tearing. And below<br/>13 the nerve, there is fat necrosis.</p> <p>14 Q. Which nerve are you<br/>15 referring to, the one on the right?</p> <p>16 A. I'm referring to all three<br/>17 of the nerves that run, more or less,<br/>18 through the center of the field.</p> <p>19 Q. Turn to number 14. Can you<br/>20 identify for us the circled vessels?</p> <p>21 A. Can I identify them?</p> <p>22 Q. Yes.</p> <p>23 A. One of them is a vessel.<br/>24 The other -- or two of them are vessels.<br/>25 The other are damaged by sectioning.</p>  | <p>1 MR. SNELL: So the record --<br/>2 MR. MAZIE: I'm going to do<br/>3 it right now.</p> <p>4 BY MR. MAZIE:</p> <p>5 Q. The ones you say are<br/>6 vessels, there are three circles to the<br/>7 right and it's the middle one?</p> <p>8 A. The middle one is a vessel,<br/>9 but even that is not appropriately cut<br/>10 across in such a way that it can be<br/>11 evaluated. The one to the --</p> <p>12 Q. Left?</p> <p>13 A. -- to the upper left is<br/>14 longitudinal or oblique and it, too,<br/>15 shows smudginess of the lining, the<br/>16 endothelium and cannot be adequately<br/>17 assessed.</p> <p>18 Q. And that drawing, just so<br/>19 we're clear, is the upper left shaped<br/>20 like a pickle?</p> <p>21 A. Or other structures, yes.</p> <p>22 Q. The surrounding tissue,<br/>23 especially in particular in the bottom<br/>24 left quadrant, do we see collagen and<br/>25 fibroblast?</p>  |
| <p style="text-align: center;">Page 123</p> <p>1 They're tangential and the tissue is not<br/>2 easily seen and, actually, even the other<br/>3 two have the same problem. There's a<br/>4 tangential sectioning, the two vessels<br/>5 that I believe I can recognize in the<br/>6 right center and upper portion.</p> <p>7 Q. So the first on the upper<br/>8 right and the one right below it?</p> <p>9 A. Not the upper right. That<br/>10 one is not -- cannot be evaluated because<br/>11 of its tangential sectioning and<br/>12 destruction of the tissue.</p> <p>13 Q. Can you point?</p> <p>14 A. This one.</p> <p>15 Q. That one cannot be?</p> <p>16 A. No.</p> <p>17 Q. So which one --</p> <p>18 A. So this one is a vessel and<br/>19 this one is a vessel, both of them<br/>20 because of the smudginess of the inner<br/>21 lining, they're not cut appropriately<br/>22 across, so they're difficult to evaluate.<br/>23 The other two above and below, and I'm<br/>24 not sure what this is, and this, cannot<br/>25 be evaluated at all.</p> | <p style="text-align: center;">Page 125</p> <p>1 A. I believe there is collagen<br/>2 and there appears to be fibroblast.</p> <p>3 Q. Let's go to number 15. Do<br/>4 you see a damaged vessel there?</p> <p>5 A. It's very difficult to<br/>6 make -- I mean, I believe there's a<br/>7 vessel in the center that's been circled.<br/>8 Again, it's longitudinal. It's not a<br/>9 nice cross-section. So it's difficult to<br/>10 make sense out of it. The lower portion<br/>11 of it is out of focus. So it's hard to<br/>12 know what to make of this.</p> <p>13 Q. Okay. Let me show you the<br/>14 last set which is 10. Let's go to number<br/>15 4. Is there any info -- strike that.</p> <p>16 Is there any information<br/>17 here as to the pore size in vivo?</p> <p>18 MR. SNELL: Objection to<br/>19 form.</p> <p>20 A. No. One can't measure the<br/>21 pore size in fields like this. I mean,<br/>22 one can approximate it because the<br/>23 individual fibers have a certain<br/>24 diameter, but it can't be a precise<br/>25 measurement.</p> |

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| <p>1           Q. Can you approximate the size<br/>2        of those pores?<br/>3           A. Not without a micrometer or<br/>4        ruler, no.<br/>5           Q. We're here at your<br/>6        deposition. You are not, as to this<br/>7        point, rendering any opinion on the size<br/>8        of any of the pores?<br/>9           MR. SNELL: Objection.<br/>10          A. Correct.<br/>11          Q. Next one, number 5, is it<br/>12        fair to say that on this polarized slide,<br/>13        the white is the mesh that's remaining<br/>14        within this sample?<br/>15          A. The few fibers, yes, or<br/>16        fragments of mesh that are in the sample.<br/>17          Q. Number 6, is that all mesh?<br/>18          MR. SNELL: Objection to<br/>19        form.<br/>20          MR. MAZIE: Strike that.<br/>21        BY MR. MAZIE:<br/>22          Q. Do you see mesh on this?<br/>23          A. Well, I don't<br/>24        specifically -- I see some spaces that I<br/>25        believe are mesh, some of the spaces</p>  | <p>1        little bit off to the left and a little<br/>2        bit off to the right.<br/>3           Q. Is the chronic inflammation<br/>4        adjacent to mesh fibers?<br/>5           A. It's in the general vicinity<br/>6        of mesh fibers, yes, but not directly<br/>7        associated with it.<br/>8           Q. Can you tell one way or the<br/>9        other whether the mesh fibers incited any<br/>10        of the chronic inflammation shown on this<br/>11        slide?<br/>12          A. It's part of the process of<br/>13        fibrosis and mesh placement. I'm sure<br/>14        the mesh has some relationship to it, but<br/>15        it's not an obvious one.<br/>16          Q. Do you see any lymphocytes?<br/>17          A. I believe this micro -- this<br/>18        power, which is a low power, the small<br/>19        cells are more likely than not<br/>20        lymphocytes.<br/>21          Q. Okay. You can put that<br/>22        away. Let me see if I have anything else<br/>23        for you.<br/>24          Doctor, do you have an<br/>25        opinion as to whether or not the mesh</p> |
| <p style="text-align: center;">Page 127</p> <p>1        appear to be tearing of the tissue. I'm<br/>2        not quite sure what several of the other<br/>3        spaces are. They may be vessels in here.<br/>4        It's difficult to tell.<br/>5          Q. Let's go to the next slide,<br/>6        which is polarization. The white stuff,<br/>7        is that all mesh?<br/>8          A. Yes.<br/>9          Q. Let's go to number 10. This<br/>10        slide shows hemosiderin?<br/>11          A. This slide shows hemosiderin<br/>12        and some lymphocytes and a few<br/>13        macrophage.<br/>14          Q. What is shown in the lower<br/>15        quadrant there, lower right quadrant?<br/>16          A. Fibrous tissue.<br/>17          Q. Is there mesh within it?<br/>18          A. There's one space that<br/>19        appears to be a complete mesh fibrous<br/>20        space and another that is an incomplete<br/>21        space.<br/>22          Q. Let's go to number 12. Does<br/>23        this slide show chronic inflammation?<br/>24          A. It shows a few areas of<br/>25        chronic inflammation in the center, a</p> | <p style="text-align: center;">Page 129</p> <p>1        itself migrates or moves?<br/>2          A. I don't have an opinion.<br/>3          MR. MAZIE: That's all I<br/>4        have. Thank you.<br/>5          THE WITNESS: Okay. Thank<br/>6        you.<br/>7          MR. SNELL: I have a couple<br/>8        quick ones.<br/>9           - - -<br/>10        EXAMINATION<br/>11           - - -<br/>12        BY MR. SNELL:<br/>13          Q. Did you see any evidence of<br/>14        of degradation?<br/>15          A. No.<br/>16          Q. Plaintiff's counsel asked<br/>17        you some questions about the inflammatory<br/>18        state and chronic inflammation. Do you,<br/>19        in general, recall those questions?<br/>20          A. In general, yes.<br/>21          Q. What do you consider to be<br/>22        chronic inflammation?<br/>23          A. Again, it comes back to what<br/>24        I indicated before. Chronic inflammation<br/>25        refers to a subset of inflammatory cells</p>  |

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|---|--|
| <p style="text-align: right;">Page 130</p> <p>1 that are predominantly lymphocytes,<br/>2 monocytes, macrophages and giant cells,<br/>3 but there's, also, a temporal component<br/>4 and that is, as tissue injury heals,<br/>5 there are inflammatory cells that are<br/>6 associated with the healing process and<br/>7 they, then, persist in the tissue to<br/>8 varying degrees.</p> <p>9 Q. And I believe you identified<br/>10 that Mrs. Gross had chronic inflammation<br/>11 associated with factors other than mesh,<br/>12 is that correct or not?</p> <p>13 A. There were chronic<br/>14 inflammatory cells in a number of<br/>15 different areas of her tissues associated<br/>16 with hemosiderin deposition and -- and/or<br/>17 fat necrosis.</p> <p>18 Q. Has any of the pictures that<br/>19 plaintiffs have showed you today changed<br/>20 any of the opinions that you submitted in<br/>21 your written report in the Gross case?</p> <p>22 A. No.</p> <p>23 Q. Do you hold all those<br/>24 opinions, including the opinions today,<br/>25 to a reasonable degree of medical</p> | <p style="text-align: right;">Page 132</p> <p>1 further scarring often in areas distant<br/>2 from mesh fibers. The entrapment of some<br/>3 nerves and the sclerosis of blood vessels<br/>4 was a result of surgical manipulation of<br/>5 the tissues and cannot be linked to<br/>6 speculative and biologically unsupported<br/>7 effects of the mesh."</p> <p>8 That's what you wrote?</p> <p>9 A. Yes, I did.</p> <p>10 Q. Is that your opinion today<br/>11 as well?</p> <p>12 A. It is.</p> <p>13 MR. SNELL: That's all I<br/>14 have. Thank you.</p> <p>15 MR. MAZIE: Okay.</p> <p>16 VIDEOGRAPHER: The time is<br/>17 now 4:38. This is the end of disk<br/>18 two. This completes today's<br/>19 deposition.</p> <p>20 - - -</p> <p>21 (Whereupon, the videotaped<br/>22 deposition concluded at 4:38<br/>23 p.m.)</p> <p>24 - - -</p> |
| <p style="text-align: right;">Page 131</p> <p>1 certainty?</p> <p>2 A. I do.</p> <p>3 Q. If I asked questions about<br/>4 the degree of inflammation and Mrs.<br/>5 Gross' inflammatory state, beyond the --<br/>6 beyond what was specifically seen on<br/>7 certain slides, will you, indeed, render<br/>8 such opinions on the nature of her<br/>9 inflammatory state?</p> <p>10 MR. MAZIE: Objection as to<br/>11 form.</p> <p>12 A. Yes.</p> <p>13 Q. In your report at page 5,<br/>14 you state that the inflammatory<br/>15 changes -- on the third paragraph below,<br/>16 "the inflammatory changes were not<br/>17 significant and they were highly<br/>18 variable."</p> <p>19 A. Yes.</p> <p>20 Q. That's an opinion you hold<br/>21 today?</p> <p>22 A. Yes.</p> <p>23 Q. You, also, write, "Her<br/>24 tissues had evidence of fat necrosis and<br/>25 hemorrhage that independently led to</p>   | <p style="text-align: right;">Page 133</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I HEREBY CERTIFY that the<br/>4 witness was duly sworn by me and that the<br/>5 deposition is a true record of the<br/>6 testimony given by the witness.</p> <p>7</p> <p>8</p> <p>9 -----<br/>10 Margaret Peoples, RPR<br/>11 Dated: November 27,2012<br/>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 (The foregoing certification<br/>20 of this transcript does not apply to any<br/>21 reproduction of the same by any means,<br/>22 unless under the direct control and/or<br/>23 supervision of the certifying reporter.)</p> <p>24</p> <p>25</p>  |

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| <p style="text-align: right;">Page 134</p> <p>1           INSTRUCTIONS TO WITNESS<br/> 2        Please read your deposition over<br/> 3        carefully and make any necessary changes.<br/> 4        You should assign a reason in the<br/> 5        appropriate column on the errata sheet<br/> 6        for any change made.<br/> 7        After making any change which has<br/> 8        been noted on the following errata sheet,<br/> 9        along with the reason for any change,<br/> 10      sign your name to the errata sheet and<br/> 11      date it.<br/> 12      You are signing it subject to the<br/> 13      changes you have made in the errata<br/> 14      sheet, which will be attached to the<br/> 15      deposition. You must sign in the space<br/> 16      provided.<br/> 17      Return the original errata sheet<br/> 18      to the deposing attorney within thirty<br/> 19      (30) days of receipt of the transcript by<br/> 20      you.</p> <p>21<br/> 22<br/> 23<br/> 24<br/> 25</p>   | <p style="text-align: right;">Page 136</p> <p>1           ACKNOWLEDGMENT OF DEPONENT<br/> 2        I, _____, do<br/> 3        hereby certify that I have read the<br/> 4        foregoing pages, 1 through 135 and that<br/> 5        the same is a correct transcription of<br/> 6        the answers given by me to the questions<br/> 7        therein propounded, except for the<br/> 8        corrections or changes in form or<br/> 9        substance, if any, noted in the attached<br/> 10      Errata Sheet.</p> <p>11<br/> 12      STEPHEN M. FACTOR, M.D.      DATE<br/> 13<br/> 14      Subscribed and sworn to before me this<br/> 15      _____ day of _____,<br/> 16      20 _____.<br/> 17      My commission expires: _____<br/> 18<br/> 19<br/> 20<br/> 21      Notary Public<br/> 22<br/> 23<br/> 24<br/> 25</p> |               |               |   |       |       |   |       |       |   |       |       |   |       |       |   |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |  |
|--|--|---------------|---------------|---|-------|-------|---|-------|-------|---|-------|-------|---|-------|-------|---|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|----|-------|-------|--|
| <p style="text-align: right;">Page 135</p> <p>1        -----<br/> 2        E R R A T A<br/> 3        -----</p> <table border="1"> <thead> <tr> <th>PAGE</th> <th>LINE</th> <th>CHANGE/REASON</th> </tr> </thead> <tbody> <tr><td>5</td><td>_____</td><td>_____</td></tr> <tr><td>6</td><td>_____</td><td>_____</td></tr> <tr><td>7</td><td>_____</td><td>_____</td></tr> <tr><td>8</td><td>_____</td><td>_____</td></tr> <tr><td>9</td><td>_____</td><td>_____</td></tr> <tr><td>10</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>_____</td><td>_____</td></tr> <tr><td>23</td><td>_____</td><td>_____</td></tr> <tr><td>24</td><td>_____</td><td>_____</td></tr> <tr><td>25</td><td>_____</td><td>_____</td></tr> </tbody> </table> | PAGE   | LINE          | CHANGE/REASON | 5 | _____ | _____ | 6 | _____ | _____ | 7 | _____ | _____ | 8 | _____ | _____ | 9 | _____ | _____ | 10 | _____ | _____ | 11 | _____ | _____ | 12 | _____ | _____ | 13 | _____ | _____ | 14 | _____ | _____ | 15 | _____ | _____ | 16 | _____ | _____ | 17 | _____ | _____ | 18 | _____ | _____ | 19 | _____ | _____ | 20 | _____ | _____ | 21 | _____ | _____ | 22 | _____ | _____ | 23 | _____ | _____ | 24 | _____ | _____ | 25 | _____ | _____ |  |
| PAGE   | LINE   | CHANGE/REASON |               |   |       |       |   |       |       |   |       |       |   |       |       |   |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |  |
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| 7  | _____  | _____         |               |   |       |       |   |       |       |   |       |       |   |       |       |   |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |  |
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| 10   | _____  | _____         |               |   |       |       |   |       |       |   |       |       |   |       |       |   |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |  |
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| 12   | _____  | _____         |               |   |       |       |   |       |       |   |       |       |   |       |       |   |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |  |
| 13   | _____  | _____         |               |   |       |       |   |       |       |   |       |       |   |       |       |   |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |  |
| 14   | _____  | _____         |               |   |       |       |   |       |       |   |       |       |   |       |       |   |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |  |
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| 20   | _____  | _____         |               |   |       |       |   |       |       |   |       |       |   |       |       |   |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |  |
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| 22   | _____  | _____         |               |   |       |       |   |       |       |   |       |       |   |       |       |   |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |    |       |       |  |
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